

## **Guidance - The Public Notice Phase of The NC Brownfields Redevelopment Section Process February 2024**

This guidance is provided to facilitate Prospective Developer's ("PD's") compliance with the statutory requirements regarding the public notice aspects of the NC brownfields process. Because they are integral to this process, a description of the brownfields documents precedes the description of PD's responsibilities regarding public notice. In order to ensure the safe reuse of properties being redeveloped under the NC Brownfields Redevelopment Section (NCBRS), the Brownfields Property Reuse Act of 1997 requires the preparation of the following four brownfields documents:

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

After the terms of these four documents have been agreed upon and are acceptable to both parties the Brownfields Project Manager will notify PD that the brownfields project is approved to proceed to public notice via email. It will:

- Be submitted to the Prospective Developer (PD) team and a specific distribution list;
- Include the electronic documents to be used for Public Comment;
- Include instructions for initiating the public comment process; and
- Include the date by which the PD team has indicated that the public notice tasks can be accomplished (typically, seven to 14 days after approval is received, but can be shorter depending on circumstances).

Once the approval has been received, the PD shall make every attempt to complete the public notice tasks within the published schedule. The following is a detailed description of PD's responsibilities in order to fully comply with the statutory provisions regarding the public notice phase of the NCBP brownfields process.

### **Public Notice Tasks**

For a period of at least 30 days, PD must make available for the public's review the "full NI package," which consists of the following elements: 1) the one-page NI, 2) the NBP and its three exhibits: Exhibit A – Brownfields Agreement with its Exhibit 1, Exhibit 2, and others as necessary, 3) Exhibit B -the reduced 8 ½ x 11-inch version of the Brownfields Survey Plat, and 4) Exhibit C -the Legal Description. **Before the public comment period can begin**, PD must complete the following **four actions** in accordance with N.C.G.S. § 130.310.34.(a):

- Provide a copy of the full NI to all local governments having jurisdiction over the Brownfields Property (the offices of the city manager and/or mayor, county manager, and county environmental health department);
- Arrange for the publication of the SNI in a newspaper of general circulation serving the area in which the Brownfields Property is located (it is imperative to understand the publication schedule and deadlines for the selected newspaper as this is often the time-limiting step);
- Mail or deliver a copy of the SNI to each owner of property ***contiguous*** to the Brownfields Property.
- Conspicuously post the SNI at the Brownfields Property; if more than one entrance, place additional copies at these entrances. Take photos of these postings the same day they are posted.

Although not specifically required by statute, to increase the availability of documents to the public, PD must also:

- Provide a copy of the full NI to the location, as specified in the SNI, where the full NI will be available for public review. Typically, a public library branch closest to the Brownfields Property is used for this purpose;

### **Public Comment Start Date**

All five elements of the full NI package [1) the one-page NI, 2) the draft NBP, and its three Exhibits, 3) the draft BFA, 4) the survey plat, and 5) the legal description] must be in a form acceptable to both parties *before* the PD can be authorized by the NCBRS to proceed to public notice and the public comment phase of the brownfields agreement process. In accordance with N.C.G.S. § 130.310.34.(b), **the 30-day period is calculated as in the following example:**

At least 30 days from the latest date of publication, posting, and mailing or delivering – see example:

- Latest date of statutory tasks: October 1 = Day 0
- October 2 = Day 1
- October 31 = Day 30
- Add 2-business day grace period for receipt of public comments by mail = November 2 (assuming falls on business day)
- Can be signed after mail is received on November 2 (if business day) or later

### **PD's Confirmation Correspondence**

Finally, PD must confirm that the above-listed five public notice tasks have been completed by providing to DEQ confirmatory, legible documentation, ***as it is obtained***, as follows:

- Photographs (close up and wide angle) of the postings of the SNI at the BF Property
- Certified mailing receipts that are post-marked with the date they were mailed; return receipt requested is not necessary
- For courier delivery, copies of courier tracking slips
- For hand delivery, documentation of receipt, e.g. from a library contact is acceptable
- For electronic delivery, email images that clearly indicate the date and receiving entity are acceptable.
- Affidavit from the newspaper of the publication of the SNI, or image of actual listing in the paper with the date and publication identified
- Submit the documentation ***as it is collected without waiting*** until all pieces of documentation have been received. This makes the process more efficient by:
  - Allowing confirmation of the correct public comment start date as soon as possible and does not obscure dates photos are taken of the postings.
  - Minimizing the duration of the public comment period extension if a problem with a task causes re-start of public comment.

### **NOTES:**

1. ***Contiguous*** means properties that are immediately adjacent on all sides and across corners from the BF Property and across from roadways, rail lines and small drainages. Properties across from large river bodies and interstate highways are not required to be noticed.
2. PD may combine all documentation of public notice tasks into one document package for ease of uploading on DEQ's Laserfiche public file repository.

3. It is not necessary to provide documentation that the receiving party has received the documents, e.g, we do not need return receipts for mailings, only proof that they were mailed.
4. It is not necessary to try to find a property owner if the mail is returned due to a change in address.
5. No third-party cover letter is required, nor desired, for the submittal of the full NI or SNI:
  - Creates opportunity for error in the communication process
  - Can be confusing to the recipient
  - Unnecessarily can increase the cost and the complexity associated with managing public notice and public comment tasks
  - If a cover letter is used, ensure that:
    - correct references to the BF property are used; and
    - ***without fail*** ensure that no instruction is given to the recipient that directs questions or comments to an entity other than the BF Redevelopment Section Chief, or their delegate

#### **Other Tasks & Tips**

**Survey Plat** – PD shall arrange for the final mylar version of the BF Survey plat to be sent to DEQ’s Green Square office no later than one week prior to Day 30 of the public comment period.

#### **Handling Public Inquiries, Public Comments, and Requests for a Public Meeting**

- All such public inquiries, public comments, and requests for a public meeting stemming from this public notice shall be directed to the appropriate party at DEQ, i.e., the Brownfields Redevelopment Section Chief or their delegates: administrative assistant, or the BF Supervisor or BF PM knowledgeable of the BF Property.
- No member of the PD team shall intervene in communications with a public entity about the brownfields documents, and if contacted by the commenter, shall redirect any inquiries, comments, or requests to DEQ.

**Signed Document Pick-up** - If time is of the essence to record the documents in a tight time frame, we strongly encourage that the PD arrange to pick up the signed documents from DEQ’s Green Square office and not rely on commercial couriers or the US Mail.