EBC New Hampshire Program
Impact of the 2018 BUILD Act on New Hampshire Brownfields Projects
Welcome to Eversource

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Welcome

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Program Introduction and Overview

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Brownfields and the BUILD Act

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U.S. EPA Region One
Brownfields
Brownfields and the BUILD Act
September 2018
What is a Brownfield?

- Brownfields sites are “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."

- The term “brownfields” is often used to describe a wide range of federal, state, and non-regulated sites.
Summary of Brownfields Successes

Leveraged Activities in New England

- $420 million in EPA brownfields grants awarded to New England communities
- 2,807 sites have been assessed with EPA brownfields grant funds
- 378 Sites cleaned up
- 16,399 jobs leveraged
- Over $2.8 billion leveraged from cleanup, construction, and redevelopment of brownfields

Source: US EPA Sep 2015
Even though the Brownfields Law was passed in 2002, there are still many potential property owners who are not clear about what to do prior to purchasing property.

The BUILD Act provides additional clarification and liability relief.
Federal Liability Relief

- Liability Exemption for acquisition through seizure for tax delinquency, bankruptcy, abandonment, or other law enforcement
- Liability Exemption for State or Local government properties acquired prior to 1/11/02: cannot have caused or contributed to contamination (BUILD Act)
- Liability Defense for Bona Fide Prospective Purchase (BFPP)
  - Rule #1: Have an ASTM Phase I Assessment done prior to purchase (shelf life)
Federal Liability Issues

- There are other things you must do as well after acquiring the property (Continuing Obligations):
  - Exercise appropriate care by taking reasonable steps which includes:
    - Stopping any continuing releases
    - Preventing any threatened future releases
    - Preventing or limiting human or environmental exposure to the site.
  - Comply with land use restrictions.
  - Comply with information requests.
Paying attention and doing these things ensures a higher probability of success when you apply for an EPA cleanup grant or try to borrow funding through an EPA revolving loan fund grant.

Speaking about Money....
Annual Brownfields General Appropriation
Fiscal Years 1997 - 2018, in millions of dollars
Eligible Entities for EPA Grants

- Eligible Entities
  - States
  - General Purpose Unit of Local Government
  - Tribes
  - Redevelopment Agencies
  - Land Clearance Authority
  - Councils of Government
  - Non-profits (BUILD Act)
    - 501c3
    - LLCs comprised of 501c3’s
    - LLPs comprised of 501c3’s
    - Community development entities per 45D(c)(1)
EPA’s Brownfields in New England
- Land and Community Revitalization -

**Assessment Grants**
$200,000 - $300,000
Possible site-specific waiver up to $350k

**Revolving Loan Fund**
$1,000,000

**Cleanup Grants**
$500,000 (BUILD Act)
possible waiver up to $650k

**Targeted Brownfields Assessments (TBA)**
Technical Assistance

**Multi-Purpose Grants**
Up to $1,000,000 (BUILD Act)
Other BUILD Act Changes

- **Petroleum Eligibility Criteria** - “Relatively Low Risk” requirement removed
- **Indirect Costs** – Now allowed up to 5% of grant
- **BFPP Definition** – Expanded to include those who have tenancy or leasehold interests in the facility
- **Small Communities Grants** – Up to $20k awarded to States/Tribes for technical assistance to small communities (<15k)
EPA coordinates with NHDES in a number of ways:

- DES approves sites for petroleum eligibility.
- Properties are assessed and cleaned up according to state regulations through DES Voluntary Cleanup Program.
- DES provides staff person to assist each grantee throughout the entire performance period of the grant. This includes attending meetings and providing technical expertise and oversight.
- EPA provides the DES with funding to establish and enhance Voluntary Cleanup Program.
Farnum Center – Manchester, NH

- Former electroplating shop abandoned with extremely hazardous chemicals – lead, asbestos, PAHs
- City of Manchester invested $47,000 in EPA Assessment funding for Phase 1 and Phase 2 Assessments
- Redeveloped by Anagnost Investments and Bishops Charitable Fund into new $4.8M opioid addiction treatment center which opened in 2013
Upcoming FY19 Competition

- Guidelines anticipated October 2018 with proposals due this winter.
- Guidelines outreach sessions by EPA
- Winners announced spring 2019.
- Grants awarded summer 2019
- Funding available to awardees October 2019
BUILD Act Recap

- Clarifies municipal liability exemptions
- Liability exemption for certain publicly-owned properties acquired before January 11, 2002
- Nonprofits now eligible for all grants
- Multi-purpose grants up to $1M ($800k this year)
- Cleanup grant cap raised to $500k ($650k with waiver)
- Small community grants for states & tribes
- Indirect costs allowed (up to 5%)
Available Resources

- EPA Region 1 Brownfields

- EPA Headquarters
  https://www.epa.gov/brownfields

- NHDES Brownfields
  https://www.des.nh.gov/organization/divisions/waste/hwrb/sss/brownfields/
Bringing You Up to Date on New Hampshire’s Brownfields Program

Mike McCluskey

Brownfields Coordinator
NHDES

Environmental Business Council of New England
Energy Environment Economy
Bringing You Up to Date on NH’s Brownfields Program

EBC New Hampshire
September 14, 2018

Michael McCluskey, P.E.
Hazardous Waste Remediation Bureau – Brownfields Program
New Hampshire Department of Environmental Services
Today’s presentation:

- Impact of the BUILD Act on NH (i.e., NHDES’ perspective)
- What does NHDES have to offer?
Impact of the BUILD Act on NH
Brownfields Utilization, Investment and Local Development Act

- Changes to 104(k) grant program
- Increased funding for Cleanup Grants from $200,000 to $500,000 for each site
- Added Multipurpose Brownfields Grants (up to $1,000,000)

That’s all great but…
Impact of the BUILD Act on NH
Brownfields Utilization, Investment and Local Development Act

- Congress is *authorized to appropriate* up to $200 million per fiscal year.

- “Authorized to be appropriated” is not the same as actually being *appropriated*!

- Congress *appropriated* $80 million for FY18 and has proposed $80 million for FY19.
Impact of the BUILD Act on NH Brownfields Utilization, Investment and Local Development Act

- Redevelopment Certainty for Governmental Entities
  - Clarifies involuntary acquisition language in the definition of “owner or operator” (Section 101(20)(D) of CERCLA) by eliminating the word “involuntarily”
  - Did not cause or contribute to release
Impact of the BUILD Act on NH Brownfields Utilization, Investment and Local Development Act

- Treatment of Certain Publicly Owned Brownfields Sites
  - Municipalities who acquired properties before January 11, 2002 are eligible for grants even if they cannot demonstrate bona fide prospective purchaser status
  - Did not cause or contribute to release
What does NHDES have to offer?

- Environmental Site Assessments
- Liability Protections
- Cleanup Funding
Underlying Theme

- Don’t count on one-stop shopping
- Your plans should include working with anybody and everybody who can provide support for your project
Brownfields Assessments

- NHDES Brownfields Assessment Grants
  - Grant of technical services
  - Contingent upon availability of funds
  - Currently spending $\approx 100K – 120K$ per year
Topstone Mill
Claremont, New Hampshire

EPA Brownfields Assessment Grant from Upper Valley Lake Sunapee Regional Planning Commission
Supplemental Site Assessment by NHDES
Liability Protections

- Federal – Bona fide Prospective Purchaser
  - Perform All Appropriate Inquiry prior to acquisition
  - Self-Implementing
- State - Brownfields Covenant Program
  - Covenant Not to Sue issued by NHDOJ in exchange for an NHDES-approved Remedial Action Plan
  - Formal process
- Did not cause or contribute to release
Why pursue a covenant?

- To make nervous people less nervous

- Municipalities
- Developers
- Lenders
- Successor Owners
The Elliot at River’s Edge
(Former Jac Pac Foods)
Manchester, NH

Federal - Bona fide prospective purchaser
State - Brownfields Covenant Not to Sue
Cleanup Funding

- NHDES Brownfields Revolving Loan Fund (RLF)
  - Low interest loans to local governments, non-profits and private entities
    - Flexible terms
    - Loan amount limited to available funds
  - Subgrants to local governments and non-profits
    - Competitive grants
    - Up to $200,000 per site
    - Plan to have grant competition every other year
Railroad Square
(Former B&M Railroad Property)
Keene, New Hampshire

Brownfields Revolving Loan Funds
- $780,000 loan from NHDES
- $288,589 loan and subgrant from Capital Regional Development Council
- $405,506 loan and subgrant from Regional Economic Development Center
Breton Cleaners
Somersworth, NH

$178,000 RLF subgrant from NHDES
$200,000 EPA Cleanup Grant
Opportunities for consultants

- Qualified Environmental Professional (QEP) for EPA Brownfields Grants
  - New grantees will be procuring QEPs this fall

- Next NHDES Cleanup Grant Competition in 2020!

- RFQ for NHDES Environmental Consulting Services Contract – due October 1st
For more information contact:

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Brownfields in Rural Cities and Towns

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Brownfields in Rural Cities and Towns
Brownfield Projects

• Lebanon NH – Population: 13,513
  • 20 Spencer St –
  • 4 Suzor Ct.

• Claremont NH - Population: 12,957
  • 56 Opera House Square
  • Farewell Block
  • Topstone Mill

• Newport NH – Population: 6,367
  • Ambargis Mill

• Lempster NH – Population: 1,149
  • Jolly Farmer
Lempster - Jolly Farmer

- Petroleum hazard, asbestos building debris
- Long-time miss use
- Multiple polluters -
- Potential for re-use – possible municipal complex with Town Offices and Fire Department
Newport - Ambargis

- Former Hartford Woolen Mill
- Most recent use was as a storage facility for recycling used oil
- Located on the Sugar River
- Adjacent to popular rail-trail network
- Future use ?: park – trail, river access, fly fishing
Lebanon – Suzor Court

- Hazardous Materials Contamination
- City of Lebanon has declared the property surplus
- Adjacent property owner purchased the property and is redeveloping the site
Lebanon – 20 Spencer St.

• Former City of Lebanon Public Works Site
• Hazardous Materials Contamination
• City is reviewing redevelopment options
Claremont – Farewell Block

• Elevator

• Other federal funds – Northern Borders
  • CDBG funding - $500k
What’s Next

• How can the BUILD ACT impact our rural cities and towns:
  • Increased funding for remediation – never a bad thing
  • Technical assistance grants will assist in identifying potential sites and train localities in navigating the grant process
  • Expand eligibility for assessment funds
Claremont – Topstone Mill

- Former Shoe and furniture manufacturing
- Currently home to restaurant and escape room facility – also reportedly haunted
Claremont – Opera House Square

• Center for the Arts
Claremont Brownfields & Historic Building Redevelopment

Nancy Merrill

Director of Planning & Development
City of Claremont, New Hampshire
Economic Development
Embracing the Built Environment
Brown Block  West elevation 2005
Last Phase – 2018
• Rear elevator and staircase
• Upper level rehab for tenant
• Full building rehab for tenant
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