

Brownfield Redevelopment: With Adversity Comes Opportunity

FL & AL Brownfield Conference

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April 2022

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Brookfield Logistics

SITE UNDER CONTRACT

- Letter of Intent
- Soft Close
- Due Diligence Begins – Earnest \$
- Access Agreements
- Engage Professionals
Legal/Engin/Remediation
- Confirm 3rd Party Insurances

DEAL TEAM

- Go/No-Go
- Formation Agmts
- Capital Sources
- Intended Use
- Maximize Lot Cover
- Insurance Proforma – PLL, CPL & GL/Excess

RAWP CONCEPTUAL

- Voluntary Remedial Program (Grants & Loans)
- Means & Method
- Fill removal or surcharge
- Cap in Place
- L/T Monitoring
- DD Ends Hard Close

FINALIZE CAP STACK

- Formation Agreements
- Debt/Equity
- Indemnity Agmts

TITLE TRANSFER

- 3rd Party Premises Liability
- CPL
- PLL
- D&O

REMEDATION

- Finalize RAWP
- Receive NFA or Equivalent
- Construction Insurance
- Proforma: B/R, G/L, EX, OPPI -Professional

GOING VERTICAL

- Bind Insurances B/R G/L, Excess OPPI CPL
- Start Construction
- Cert of Occupancy

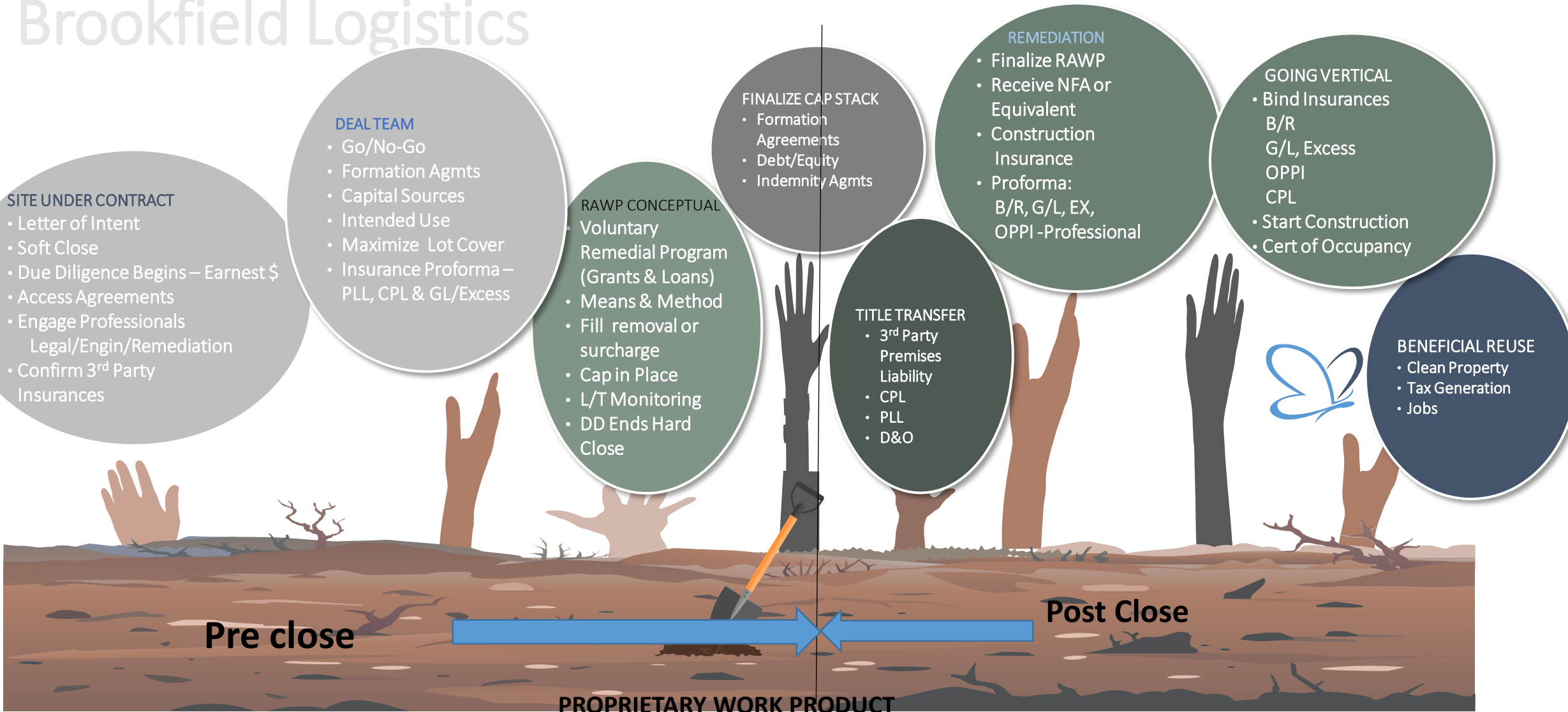
BENEFICIAL REUSE

- Clean Property
- Tax Generation
- Jobs

Pre close

Post Close

PROPRIETARY WORK PRODUCT



Insurance is an Asset

Pollution Legal Liability Title Risk

Intent: To indemnify &/or defend all insureds for pollution related losses arising from contractually assumed liabilities or resulting from an insureds legal duty to respond.

Coverage Provided: Remediation Expenses (legacy pre close and post close releases including Reopened Claims)

Third Party Bodily Injury and Property Damage

Natural Resource Damages

Loss of Earnings

Legal Defense Expenses

Leveraging PLL

Assume liability for known remediation events

- expected remedial costs are retained “not insurable”
- unexpected remedial costs are insurable
- Claims resulting post NFA in need of additional remedies are insurable

Indemnify Insureds for Tort Liabilities arising from known/unknown events

- Third Party Bodily Injury & Property Damage
- Liability resulting from failed engine/institutional controls
- Damages to environment

Assignable – asset to future property transfer

Extend Cover to future lessees/tenants/etc

Maximum Policy Term: 10 years/ 13 years for Lender Driven transactions

Insurance is an Asset

Contractors Pollution Legal Liability - Scope of Remedial and Construction Activities

Intent: To indemnify &/or defend all insureds for newly created or exacerbated pollution conditions resulting from third party contracting operations.

Coverage Provided: Remediation Expenses (exacerbation of known events and new pollution events)

Third Party Bodily Injury and Property Damage

Natural Resource Damages

Delay Expenses “carrying costs”

Legal Defense Expenses

Leveraging CPL

Indemnify Seller for Tort Liabilities arising from exacerbation events

- Third Party Bodily Injury & Property Damage
- Liability resulting from failed engine/institutional controls
- Liability resulting from geotech, footings/foundations & construction activities
- Damages to environment

Extend coverage to GC and all contractors regardless of tier

One policy with consistent terms and conditions, one deductible and one pt of contact

Recapture CPL insurance charges (plus P&A avoidance) from all contractors

Expand Breadth of contracting pool – MBE/MWE etc

Includes coverage for state mandated Statute of Repose

Assignable, asset to future property transfer

Insurance is an Asset

Third Party Liability – Commercial General Liability plus Excess: Owners Controlled Insurance Program

Intent: To indemnify and/or defend project sponsor and all insureds from and against claims, suits or loss alleged to create third party liability (bodily injury or property damage)

Coverage Provided: Third Party Bodily Injury and Property Damage

- Trespasses'/Invitees/Guests

Personal & Advertising Injury

Completed Operations post CO

Legal Defense Expenses

Leveraging GL: Indemnify Seller for Tort Liabilities arising from pre close injuries presented post close

- Third Party Bodily Injury & Property Damage ex Environmental

Extend coverage to GC and all contractors regardless of tier

One insurance program with consistent terms and conditions, one deductible and one pt of contact

Recapture GL and Excess insurance charges (plus P&A avoidance) from all contractors, up to 2% recapture based on hard costs

Expand Breadth of contracting pool – MBE/MWE etc

Includes coverage for state mandated Statute of Repose (CA 10 years post CO)

Assignable, asset to future property transfer

LOI/Soft Close

Brownfield/Greenfield Transactions: Buy/Lease (title or leasehold risk)

- Who maintains liability for pre close environmental conditions discovered post close?
- Was a Phase 1 or Preliminary Assessment completed? If so by whom? Breadth of Scope of Work? Limitations of liability for negligence?
- How much usable space is available – scale?
- Reopener Coverage/Emerging Contaminants – buyer or seller
- General Framework of Transaction (environmental indemnities)

Project Professionals

Hiring Third Party Professionals

- Land Use/Real Estate and Environmental
- Environmental Consultant/Engineering Consultant “geotech”
- Insurance: Environmental – Contractors Pollution (non owned property), Third Party Liability. Counterparty Risk & limitations of liability often embedded in terms and conditions
- Development Work: EPC Contractor: OCIP v CCIP
- GC and Subcontractors
 - Breadth of insurance provided by others
 - Claims Control
 - Insurance Cost or Allocation plus Overhead (P&A) Charges

Deal Team Formation

Formation Agreements

- Special Purpose Entity or Entities – liability among partners:
 - members
 - individuals
 - heirs/trust or estates
 - Liability under CERCLA survives LLC dissolution
- Joint Venture or multiple sponsors
- Cross Party Environmental Indemnification Obligations
- Parental Liability (liability protections usually flows down, not up)
- Long term play with Asset and impacts of Assignment
 - Opportunity Zone
 - Approvals
 - Develop and hold
 - Develop and sell/1031 Exchange/Property Trades

Insurance Due Diligence

Insurance

- Understand the values at risk
- Extent of remediation
- Intended Use aka Material Change in Use, for example
 - industrial to industrial
 - industrial to commercial
 - industrial to residential
 - How clean is clean, now and in the future?
 - Emerging contaminants
- Liabilities assumed or retained and impact of buyers activities on Seller indemnity
- Additional risks or insurance needs imposed by parties
- What is the physical location: PRONE TO NATURAL CATASTROPHES:
FLOOD/WIND/QUAKE

Remediation begins

Develop Remedial Action Work Plan

- Extent and Scope
- Time to complete
- Potential Creep in Scope: potentially insurable
- Exacerbation of known contamination, such as cap
- Potential Discovery of Unknown Pollutants – potentially insurable
- Verify Landfill Closure Plan and develop/submit plans to disturb cap
- Geotech – foundation systems & potential impact on cap: engine/institution controls
- Minimize Third Party Impacts by Investigation: Human Health & the Environment
 - Off Site Migration
 - Wildlife
 - NGO – Non Governmental Organizations
 - Environmental Justice

Cap Stack

Finalize Cap Stack

- a) Debt v Equity
 - Preferred Equity
 - Commercial Debt via traditional lending agreement
 - Private Equity or Hedge Fund
 - Revolving Credit Line
- b) Cap Stack Input on Insurance?
 - Types of Insurance
 - Limits of Coverage
 - Term
 - Completed Ops
- c) Survival of Reps and Warranties in Loan Documents – beyond repayment period

Insurances at Closing

Bind First Party Necessary Insurances at Financial Close

- General Liability/Third Party Liability/Umbrella Liability: Premises Risk
- Contractors Pollution or Pollution Legal Liability: Dirt Risk
- Directors & Officers: More suited for JV Partnerships, Individual Directors and Officers/Entity Cover – depends on team structure; offering memo, etc;
- D&O Cover: expand to include legal defense arising from pollution conditions

Verify Third Party Insurances

- Additional Insured
- Notice Provisions
- Hold Harmless Indemnification Agreements above and beyond attachable insurances

Remediation & Development Risk and Insurance

Finalize Remedial Action Work Plan

- Remedial Action Work Plans
- Excess fill – disposal risk or infilling required
- Plans to disrupt landfill or engine/institutional controls such as Cap, Deed Restriction, CEA
- Developments Extent of Dig and Haul Risk: Haz Waste Disposal
- Exposure risk to third parties: consultants and contractor
- Incident Reporting Procedures
- Claims “insurance” Procedures

Going Vertical

Finalize Development/Construction Insurances

Builders Risk

- Equipment/Material Deployment up until CO
- Flood, Wind & Quake
- Include Soft Costs
- CAT Modeling

Liability Schemes: General & Excess Liability including statute of repose (varies by state)

- Owners Insurance plus GC Insurance plus Contractors
- Owners and GC Insurance plus Contractors
- Owners and GC and Contractors via Wrap

Going Vertical

Finalize Development/Construction Insurances

- Marine Cargo for Component Parts plus Delay in Startup – specialty equipment installation (backstop against liquidated damages due to delays: Terms of Trade)
- Owners Professional Indemnity: Excess over A&E Malpractice Cover including Statute of Repose
- Owner directed insurance or Contractor Controlled Insurance
- Issue & Monitor Certificates of Insurance

Thank You.

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