

## BROWNFIELDS

Even before the concept of Brownfields Development came to the attention of public and private entities, members of Carlton Fields had been very much involved in the development and implementation of this approach to the environmentally sound reuse of otherwise discarded, underutilized or even abandoned properties. Much of this grows out of the Firm's experience and involvement in projects where there has been a tremendous overlap between environmental constraints and real estate issues.

The most senior member of the Firm's Environmental Practice Group, Roger Schwenke, has written and lectured on the subject of Brownfields Development for many, many years. As early as 1995, he was explaining the concept to real estate lawyers in the American Bar Association, and to members of the American College of Real Estate Lawyers. In his capacity as Chairman of the College's Environmental and Land Use Committee, he coordinated an effort by the College to work with EPA in the development of guidance covering institutional controls, and in the College's contributions to the development of ASTM standards covering institutional Controls. At the request of EPA, Mr. Schwenke was a participant in one of the Annual Brownfields Conferences, which EPA presents each year, speaking on the overlap between environmental law and real estate law when institutional controls are attempted. At the request of DEP, Mr. Schwenke appeared before a meeting of DEP's Contaminated Soils Forum, to speak on real estate and environmental issues that arise when Brownfields and other sites attempt to use institutional controls as a part of a remedial process. Brownfields issues also arose during testimony that Mr. Schwenke presented to a Congressional Committee (on behalf of the American Bar Association) evaluating the problems with the Superfund Program at EPA.

Based on the Firm's reputation in the Brownfields' area, Roger Schwenke was invited to prepare the Florida Chapter to the Brownfields Treatise that is published by the Section of Natural Resources, Energy and Environmental Law, of the American Bar Association. The second edition of that book "**Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property**" was recently released, and this contains the Florida Chapter which Mr. Schwenke prepared.

Prior to the time that he was asked to head the air pollution program of the Florida Department of Environmental Protection, Michael Cooke also worked actively with Roger Schwenke on these Brownfields efforts, including co-authoring the Florida chapter to the comprehensive Brownfields book noted above.

Laurel Lockett, Roger Schwenke, and other firm attorneys have been regular speakers at the Annual Florida Brownfields Conference since its inception, on a variety of topics including funding and lenders issues, environmental insurance, vapor intrusion and environmental justice.

Roger Schwenke has been serving as the representative of the American Bar Association to a drafting committee of the National Conference of Commissioners on Uniform State Laws. That drafting committee, and subsequently the entire Conference, has recently adopted a Uniform Environmental Covenants Act, which should substantially assist in the creation and enforcement of environmental institutional controls that form a critical part of successful Brownfields development. Roger will be working with the staff of the Conference in efforts during 2004 to have the Uniform Act considered for adoption by the Florida Legislature.

With respect to specific projects where Carlton Fields has been involved in Brownfields, the following are several illustrations:

- Carlton Fields environmental lawyers are working with and representing the City of Pensacola in connection with redevelopment of a former industrial waterfront area into a festival park, auditorium, and future commercial development site. The area in question is a large peninsula of land immediately south of City Hall in downtown Pensacola. It had been used for heavy industry since the late 1800s. The eastern half of the site was leased by the former owner to Chevron for a tank farm and terminal facility from the 1940s through the 1980s. The site has petroleum impacts (some of that being the subject of prior and ongoing remediation by both Chevron and the State of Florida), as well as other contamination. A portion of the site is covered by the State of Florida Petroleum Pre-Approval Program, and other portions are in the Petroleum PCPP Program. Other portions of the site have impacts from historical operations that are not petroleum related.

Carlton Fields has been retained by successive owners of the site, most recently the Trust for Public Land and now the City of Pensacola, to assist with negotiations with Chevron and with the State of Florida to resolve all regulatory issues in connection with the City's site development plan, to negotiate institutional controls and deed restrictions with the State, to negotiate alternative remedies for existing impacts, and to try to maximize the extent to which the State of Florida programs and others could contribute to site remediation in a manner most consistent with the development plan. This includes coordination with City contractors on environmental issues, coordination between the City of Pensacola and State of Florida related to site areas covered by the State cleanup programs, and overall efforts to keep both City and State personnel simultaneously aware of other agency concerns.

Although the Pensacola property is not formally designated as a "Brownfield Site", this site evidences the complexities typically related to reuse of properties historically used by heavy industry – particularly in the pre-regulatory time periods.

- Carlton Fields lawyers negotiated one of the first Brownfields Site Rehabilitation Agreements (BSRAs) that was signed with the State of Florida, relating to property here in

Hillsborough County, known as the WRB Site. Subsequently, the site has been expanded to a multi-party site, with the joinder of CSX Transportation with respect to an adjoining parcel, in the County's designation. In connection with the original designation of the WRB Site by the County, we were successful in working with the County and EPA to obtain EPA grant funding for the performance by the County of \$100,000 of assessment work on the site, and are close to completing assessment and moving into remedial action and redevelopment

- In connection with another site within the City of Tampa Limits, Roger Schwenke and Laurel Lockett negotiated a litigation settlement with the Florida Department of Environmental Protection for a former scrap facility, which contemplated Brownfields development at some future date. In connection with this site, Carlton Fields lawyers have had recent preliminary discussions with the City of Tampa regarding possible Brownfields designation. Although there has not yet been a formal application, we have become familiar with the City application procedures and have a very good working relationship with staff and staff attorneys within the City of Tampa.

In this regard, we have also developed extensive use and reliance on environmental insurance products to facilitate transactions involving contaminated properties. Carlton Fields environmental lawyers have extensive experience with all of the major underwriters writing policies on Florida properties to cover environmental contamination, including coverage for known conditions and policies that will "wrap-around" and supplement the State of Florida Petroleum and Dry-Cleaner Cleanup Programs.