

Brownfields Redevelopment Section Responses to March 2026 Stakeholder Comments on BFA and LUR Template Language

August 28, 2026

The Brownfields Redevelopment Section (BRS) sincerely appreciates the input from stakeholders that we and our legal counsel at the Department of Justice received in early 2026 related to the Brownfields Agreement (BFA) template and land use restrictions (LUR) menu. We received no comments related to the land use definitions (LUD) menu.

As discussed with stakeholders in 2025, BRS has begun an initiative to negotiating BFA and LUR language in bulk on an annual basis. This process was instituted to help expedite the drafting, review, and negotiation of BFAs. Following initial publication for comment of the BFA template, LUR and LUD menus in May 2025, BRS principally received comments on these documents from three law firms which have substantial experience with the Brownfields Program. Certain comments referenced herein were included verbatim from these submittals. Many of the comments were not accepted as is, but the issue raised was addressed in a different manner. Some of the comments were not accepted based on DEQ and legal counsel review that determined the issue was already adequately addressed in the documentation or our process or the comment was not in keeping with our authorizing statute, the Brownfields Property Reuse Act of 1997 (NCGS § 130A-310.30, including Session Law 2025-53, Senate Bill 387, effective July 2025).

The stakeholder comments are outlined below with BRS discussion following each:

- 1) Inclusion of the history and environmental summary in the BFA
- 2) Continuing to have the prior long-form BFA as an option
- 3) Inclusion of the DEQ Decision Memorandum (DM) as an attachment to the BFA
- 4) Concerns over the perpetuity of, and access to, the DEQ electronic public file repository, Laserfiche
- 5) Application of the construction fee and definition of the Period of Active Construction
- 6) Revisions to the language in the Prospective's Developer's Covenant Not to Sue section (Section XI)
- 7) Inclusion of an email option for the submittal of notices and submissions to DEQ
- 8) Specific LUR edits:
 - a. LUR regarding per- and polyfluoroalkyl substances (PFAS)
 - b. LUR regarding the definition of tenant renovations that require notification in the annual land use restriction update (LURU)
 - c. LUR regarding final grade sampling
 - d. LUR regarding ongoing remediation or monitoring

1) Inclusion of the history and environmental summary in the BFA

The Brownfields Property Reuse Act addresses what is to be included in the Notice of Brownfields Property (NBP) to which the Brownfields Agreement is an exhibit. Over the years since the Brownfields Program began, the BFA evolved to include more historical information and an environmental summary which the statute does not require. Although we

agree that this information is important, it is included in other documents that are either part of the NBP or are included in the project-specific DEQ Decision Memorandum, which is made part of the public document record at the time the project is approved to proceed to public comment.

2) Continuing to have the prior long-form BFA as an option

A stakeholder correctly noted that at one time we discussed with a subgroup of stakeholders that the new BFA template was to be an option at the prospective developer's discretion. However, this was mentioned in the context of a brainstorming of ideas. Based on positive and successful experience with the new template and to avoid confusion by having two formats, DEQ will use only the new BFA template.

3) Inclusion of the DEQ Decision Memorandum (DM) as an attachment to the BFA

The DEQ Decision Memorandum (DM) was developed as an internal document to provide a summary of key facts about a particular brownfields property, including the location; size; historical, current, and/or proposed future uses; basic information about the prospective developer; regulatory agency history with other agencies or NC DEQ programs under other sections, such as the Underground Storage Tank (UST) Section, Superfund Section, Solid Waste Section, or Hazardous Waste Section; to provide a list of reports that DEQ relied on to make their risk-based decisions; to address what is known about environmental risks posed by contaminants that would remain on the brownfields property and be subject to a BFA; and to link those calculated environmental risks with the risk management strategies identified in the BFA, which serves as an institutional control for environmental risk management at a brownfields property.

The BRS process is to have the DM available at the time of public comment on our public file repository, Laserfiche. This allows interested external parties the opportunity to review the DM and gain an understanding of the reasoning behind BRS' decisions at a particular brownfields property. We do not intend to make the DM part of the NBP because it is not required by the statute and the DM is already available to the public at the beginning of the public comment period on our public file repository, Laserfiche.

4) Concerns over the perpetuity of, and access to, the DEQ electronic public file repository, Laserfiche

Concerns were raised that access to brownfields projects records may be stymied by a change in our public records system. Our current public repository system, [Laserfiche](#), is accessible to the public through our online public records link. In response, we have modified Section I of the BFA template to include additional information regarding access to public records. This location also contains a link to Public Information Contacts, where one can learn more about requesting public records and find contact information for the public information officer for each division within DEQ. The public information officer for the BRS would be found in the Division of Waste Management link. Should DEQ discontinue use of Laserfiche, that undertaking would be accomplished with proper notice to the public regarding how to

access public records via a new system at that time, which would be in accordance with the NC Public Records Law.

Other options available to the public are to submit a public records request or to contact the Brownfields project manager as noted on the project-specific link found on the [Brownfields Site Inventory Map](#), or to access the document link to the Laserfiche project files for a specific project from the Brownfields Site Inventory Map.

A stakeholder raised the issue that the brownfields specific Laserfiche link, which is accessed through the brownfields project number, would not necessarily include applicable documents from other sections. That may be true for certain sites as making duplicate copies of reports on more than one section's Laserfiche link is not an approved action. However, a list of reports is included in the DM, as is any identifying regulatory agency numbers, which an interested party can use to search for those documents if not found in the brownfields files.

5) Application of the construction fee and definition of the Period of Active Construction

We understand that prospective developers who entered the brownfields program prior to the clarification of brownfields fees provided in Session Law 2025-53 may be surprised by these fees. As discussed with stakeholders throughout 2025, our statute requires that the Brownfields Program collects fees “that are in an amount equal to the full cost to the Department and the Department of Justice of all activities related to the brownfields agreement, including but not limited to negotiation of the brownfields agreement, public notice and community involvement, and monitoring the implementation of and compliance with the brownfields agreement and requirements of this Part regarding the Notice to Brownfields Property.” Given the complexity to certain construction projects being developed under BFAs and the economics of redevelopment, the collection of a construction fee in this manner garnered the most support of the options discussed with a stakeholder subgroup as a way to ensure that the BRS is collecting fees in accordance with our statutory requirements.

We do not feel it necessary to modify the template language at this time, although we are open to feedback as we work through this new process. Our current approach is that the construction fee will be determined on a case-by-case basis based on applicable construction work that has been done in the Program for the prior year. For projects for where there is an already approved Environmental Management Plan (EMP), we have included the new construction fee language in the BFA template, but we will waive the fee for the first phase of construction work. The inclusion of the construction fee language in this situation is to address additional phases of construction and/or future redevelopment(s).

6) Revisions to the language in the Prospective’s Developer’s Covenant Not to Sue section (Section XI)

We revised the language in this Section in the November 2025 template, which some parties who commented may not have seen. This revision provides an exception to the Covenant Not to Sue for challenges to a civil penalty or cost recovery for enforcement by DEQ. One stakeholder proposed that we precede the word “enforcement” with the word “alleged”; however, as enforcement is an action that DEQ takes rather than an allegation, we have not included “alleged” in the revision.

7) Inclusion of an email option for the submittal of notices and submissions to DEQ

The inclusion of an email option for the submittal of notices and submissions to DEQ has been requested before. Under the advice of legal counsel, we have not included an email option for such submittals in the past. Now with the advent of AccessDEQ and the requirement to have submittals to the appropriate project in this database, we are not including emails as an option for such submittals.

8) Specific LUR edits:

a. LUR regarding per- and polyfluoroalkyl substances (PFAS)

A recent LUR regarding PFAS contained an “including but not limited to” statement that was problematic for certain stakeholders. We believe we have fixed this issue by excluding that statement. Please note that the BRS prepared Issue Resolution 17 that addressed the assessment of PFAS at brownfields properties. That issue resolution was drafted prior to the promulgation of NC 2L groundwater standards for three PFAS. Due to this regulatory change and the changing regulatory landscape around PFAS, the BRS is in the process of modifying this issue resolution.

The revised LUR reads as follows:

The Brownfields Property may not be used for industrial uses where the class of substances known as per- and polyfluoroalkyl substances (PFAS), which includes the compounds perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), and Gen X, are intentionally used or added, or are present as part of the process or waste stream.

b. LUR regarding the definition of tenant renovations that require notification in the annual land use restriction update (LURU)

We understand that the land use restriction update subparagraph that referenced tenant renovations was broadly constructed. We have modified this specific land use restriction subparagraph so that it is clear we are concerned with activities that would disturb the concrete slab at properties that have vapor intrusion mitigation

systems in place, and would not pertain to painting, adding partition walls, etc. that did not disturb the slab.

c. LUR regarding final grade sampling

Certain stakeholders requested that we make a change to the final grade sampling land use restriction so that it limits final grade sampling to only those areas that have been redeveloped. We note that this edit is already an option available on the LUR Menu.

d. LUR regarding ongoing remediation or monitoring

A stakeholder proposed that we delete one of the LURs and revise a second one for the circumstance when there is ongoing remediation or monitoring at a brownfields property by a Responsible Party (RP) or another party. The concern is that we will require the prospective developer or a future owner of a BF property to step into the shoes of the RP. This is not the intent of the LUR. A prospective developer or a future owner of a brownfields property is required to make the site safe for its reuse. It is in this context (making the site safe) that BRS would require the prospective developer or future owner of the brownfields property to evaluate the risk to onsite uses if RP actions are discontinued. Therefore, we are making no changes to the LUR options for this circumstance.

In addition to these comments, we took this opportunity to revise the BFA template to reflect the following:

- 1) Updates made in Oct/Nov 2025 related to amendments to the Brownfields Property Reuse Act effective July 2025 (Session Law 2025-53, Senate Bill 387)
- 2) Revisions to reflect our new BRS Section Chief, effective April 13, 2026
- 3) Revisions to address minor grammatical edits
- 4) Update the names of various guidance documents to be used for brownfields sites to align with our most recent documents available on our [website](#).