

North Carolina Department of Environmental Quality

Pat McCrory  
Governor

Donald R. van der Vaart  
Secretary

October 27, 2015

**MEMORANDUM**

TO: ENVIRONMENTAL REVIEW COMMISSION  
The Honorable Mike Hager, Co-Chair  
The Honorable Brent Jackson, Co-Chair

FROM: Matthew Dockham, Director of Legislative Affairs

SUBJECT: Evaluation of Effectiveness of Brownfields Property Reuse Act

DATE: October 27, 2015

Pursuant to G.S. 130A-310.40, “the Department shall prepare and submit to the Environmental Review Commission... an evaluation of the effectiveness of this Part [the Brownfields Property Reuse Act] in facilitating the remediation and reuse of existing industrial and commercial properties. This evaluation shall include any recommendations for additional incentives or changes, if needed, to improve the effectiveness of this Part in addressing such properties.” Please consider the attached as the formal submission this report. If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at [matthew.dockham@ncdenr.gov](mailto:matthew.dockham@ncdenr.gov).

cc: Tom Reeder, Assistant Secretary for Environment, NCDEQ  
Linda Culpepper, Director of Waste Management, NCDEQ

Annual Report to the North  
Carolina General Assembly

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**The Brownfields Program**

Division of Waste Management

**October 2015**

**NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

North Carolina Brownfields  
Program [www.ncbrownfields.org](http://www.ncbrownfields.org)

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## Executive Summary

This report to the General Assembly is required by the Brownfields Property Reuse Act of 1997 (G.S. 130A-310.40 *et seq.*) and describes the activities and status of the N.C. Department of Environmental Quality (DEQ's) Division of Waste Management Brownfields Program (Program) for the period of Oct 1, 2014 through Sept 30, 2015, Federal Fiscal Year 2015 (FFY15). The Program is pleased to report continued success in the state's efforts to revitalize and safely reuse brownfields properties..

### Program Output

The Program produced 39 finalized brownfields agreements during the reporting period, bringing the total number of finalized agreements since program inception to 357. For the current reporting period, totals for the measures tracked by the Program are:

- Program applications received: 86
- Brownfields agreements finalized: 39
- Acres of Brownfields revitalized to safe, productive reuse: 740
- Estimated committed capital investment for projects completed during FFY15: \$786 million

All of the public dollars spent have been either federal funds from a cooperative grant with the EPA or from Program fee receipts. No state-appropriated funds are received for the Program. With these funds, the Program has facilitated more than \$10 billion in estimated private investment in the redevelopment of brownfields properties across North Carolina, to the benefit of its citizens.

### Outreach to Local Governments

Working in partnership with local governments to advance redevelopment projects in their communities has led to continued success for those local governments applying for and winning competitive brownfields grants offered by the EPA for the assessment and cleanup of brownfields properties. The cities of Princeton and Williamston were awarded a total of \$679,000 in U.S. EPA brownfields grants in EPA's 2015 grant cycle.

## Program Background

Brownfields are abandoned, idled or underused properties where environmental contamination hinders redevelopment due to concerns about environmental liability. Redevelopment of brownfields properties has become increasingly popular as developers and local governments realize that these properties offer viable opportunities to bring economic growth, public health protection, jobs and quality-of-life benefits to cities and rural areas. The Brownfields Property Reuse Act of 1997 (BPRA) gives the Division of Waste Management the authority to enter into

brownfields agreements with prospective developers who did not cause or contribute to site contamination. The BPRA modifies the environmental liability barrier for prospective developers and motivates them to bring these properties and their hindrances to the Division of Waste Management's attention. The Division of Waste Management partners with the prospective developer to evaluate the possible risks associated with site contamination, and then negotiates a brownfields agreement stipulating the steps necessary to make the site safe for a specific intended reuse or suite of uses. The brownfields agreement includes land use restrictions (LURs) to ensure the site remains safe, and owners of property with an agreement are required to submit an annual LUR Update certifying compliance with the LURs. The result is a redevelopment project that fuels economic growth while protecting public health and the environment.

Redevelopment projects that are undertaken via the Program's brownfields agreement process, and the developers who advance these projects, enjoy the following benefits:

- Developers work with the Program to define the actions they must complete to make the property safe for the intended reuse, and lenders are more willing to make loans on these projects because the cost to complete these actions is not an open-ended proposition.
- As long as developers make and maintain the site safe for the intended reuse, they receive liability protection against future state enforcement for existing contamination.
- The same liability protection extends by statute to lenders, tenants, occupants and future owners as long as these entities did not cause or contribute to site contamination.
- Owners of property with a brownfields agreement have access to a special property tax exclusion whereby property tax is phased in over five years, resulting in a property tax savings of approximately 50% over those first five years. These tax savings can be used to offset the costs to complete the safe-making actions required by the Program.

The BPRA allows the Division of Waste Management to distinguish between prospective developers of brownfields properties and the polluters of those properties. Instead of mandating that the site be remediated to unrestricted use standards, the BPRA requires developers to make the site safe for a specifically identified reuse. The Program evaluates site contamination and identifies the risks impacts may pose to public health and the environment. DEQ then determines what safe-making actions the prospective developer must take to ensure safe redevelopment. These actions can range from land-use restrictions to cleanup, or a mixture of both. In addition to holding prospective developers accountable to their agreements, DEQ reserves the right to enforce against those parties responsible for the original contamination.

The overall result is a winning scenario for the environment and for economic development. Risk reductions and cleanups are achieved at sites that could have harmed the public or the environment, and prospective developers redevelop abandoned properties that once had little hope for productive reuse. The public benefits of job creation, improved quality of life in the surrounding neighborhoods, local tax base expansion and contribution to the general fund are other positive impacts. By the end of FFY 2015, an estimated \$9.8 billion in capital investment will have been committed to redevelop abandoned properties that afflict urban and rural landscapes.

The Program also supports smart growth and sustainability and motivates the market to recycle these sites back into safe, productive reuse, while preserving or reducing the use of pristine or undeveloped "greenfields" property. Every project that reuses property, whether it is in an urban center or a rural area, preserves green space, reduces suburban sprawl and supports sustainable urban development. The 357 properties that have received completed agreements represent 6,400

acres of recycled land and, wherever possible, buildings that have historic or aesthetic value. This is, in effect, acreage that is being recycled into reuse, sparing more pristine lands from development and risk for future contamination.

Figure 1 (below) summarizes the steps involved in obtaining a brownfields agreement.

**Figure 1. Summary of the Brownfields Agreement Process**

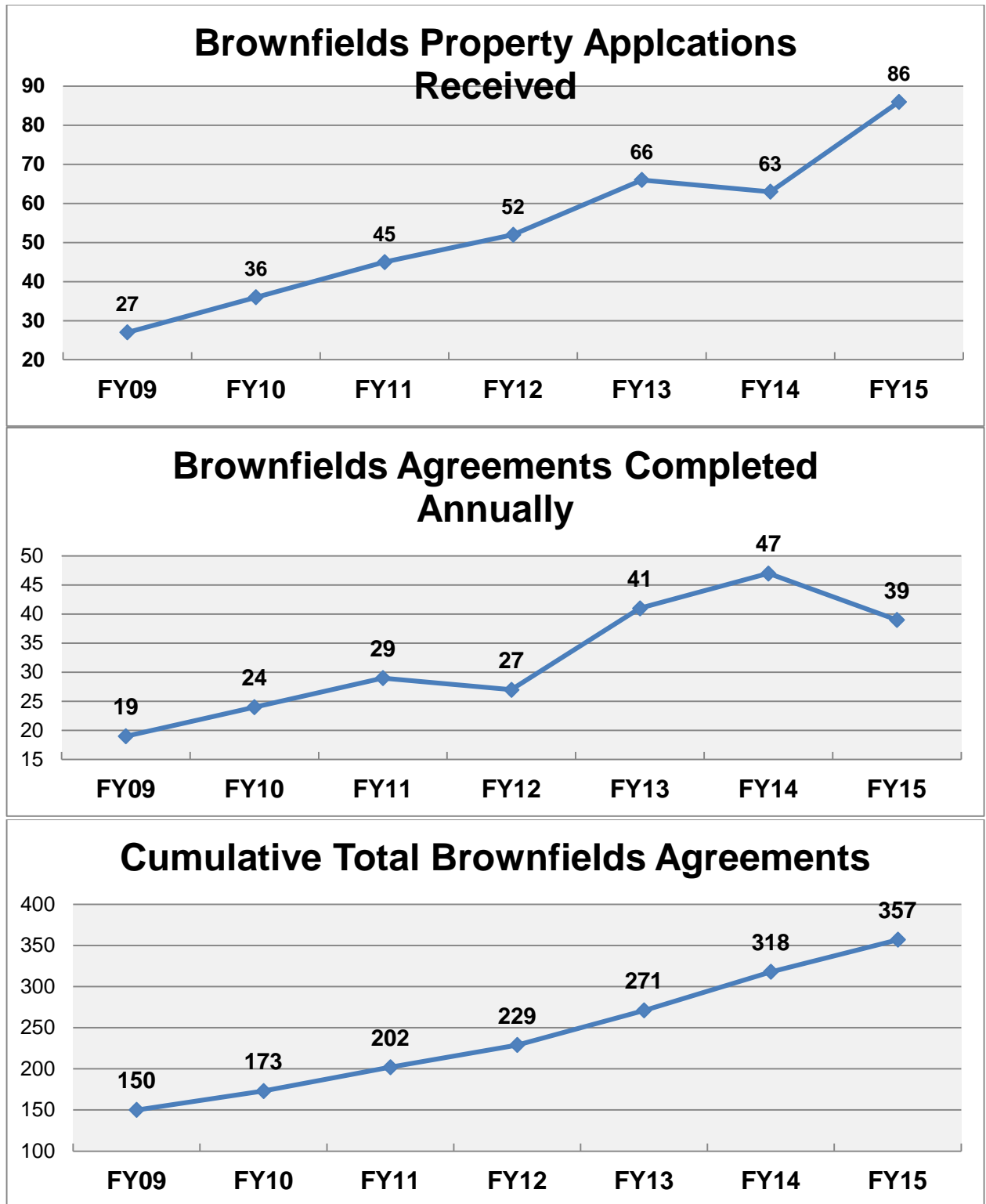
- Step 1 – A prospective developer (PD) submits a Brownfields Property Application to the Division of Waste Management outlining a brownfields site it desires to buy or sell for the purposes of redevelopment, and for which it needs liability protection. The Division of Waste Management determines if the PD, the subject property and the proposed redevelopment project are eligible under the BPR A statute. The PD pays an initial \$2,000 fee at the time its project is deemed eligible by the Division of Waste Management.**
- Step 2 – The Division of Waste Management reviews existing site data to determine the risk posed by contamination at the site. If the data are insufficient to evaluate such risk, the Division of Waste Management advises the PD on further site assessment to gather the necessary data.**
- Step 3 – The Division of Waste Management determines what actions are necessary to make the site suitable for the PD’s intended reuse and includes these actions in a draft brownfields agreement. The PD and the Division of Waste Management negotiate the provisions of the draft brownfields agreement and other required statutory documents.**
- Step 4 – A public notice of the brownfields agreement is published, with a 30-day public comment period.**
- Step 5 - The brownfields agreement is finalized after any public comments are considered and incorporated. Prior to the execution of the finalized brownfields agreement, the PD pays the secondary fee negotiated in the agreement, and the agreement is executed and recorded at the County Register of Deeds.**
- Step 6 -The PD completes any site safe-making actions required under the agreement, thereby triggering the agreement’s liability protections in the form of a covenant not-to-sue. The liability protection allows the flow of lender financing that facilitates redevelopment.**
- Step 7 – Upon completion of the brownfields property improvements, the property owner is eligible for the brownfields property tax incentive, which reduces its property taxes for a five-year period.**

## **Program Status**

During FFY 2015, the program received 86 applications for projects seeking entry into the program. This compares to the 63 applications received in FFY 2014 and accelerates an increasing trend since 2008 and 2009. During FFY 2015, the Program completed 39 brownfields agreements. This is a reduction in the number of brownfields agreements completed compared to the previous FFY, in part due to lower staff resources, increased post-recording work and an over thirty percent increase in new applications received by the Program and processed for eligibility. These factors have been partly addressed through recent hiring actions within the program that will provide additional resources to process the increased workload. Figure 2 below shows the trends in some program measurables over the last several years.

The Program is preparing to receive its tenth year of funding from the EPA under its State Response Program Cooperative Agreement, authorized under the federal brownfields act. This federal funding will cover the period from October 1, 2015 through September 30, 2016 and provides a total of 8.02 full-time equivalents (FTEs) to the Division of Waste Management. Of these, 6.35 FTEs are in the Brownfields Program and 1.67 FTEs are in the Inactive Hazardous Sites Program. For the Brownfields Program, this federal grant funds a core of three project managers in Raleigh and three regionally-located project managers: one each in Asheville, Charlotte, and Wilmington. In recent years, the U.S. EPA has decreased this type of funding for all states, including North Carolina. The Program has been able to respond to these federal funding cuts by increasing fee funding in order to maintain capacity. Fee funding now supports eight positions.

**Figure 2. Brownfields Program Trends**





# **Outreach and Education**

## **Prospective Developers and Lenders**

Participation in the Program by prospective developers is voluntary and largely market-driven. Prospective developers apply to the Program to minimize uncertainties associated with environmental liability, which often clears the path for redevelopment financing on environmentally impacted property, and to take advantage of the brownfields partial tax exclusion on property improvements, which can offset the costs of the Program. One of the goals is to educate the development community, lenders and local governments about the existence and multiple benefits of the Program. Outreach efforts such as participation in public workshops, local government meetings, or with private developers, continue to bring new redevelopment opportunities to communities in North Carolina along with significant public benefits. Benefits include quality jobs and monetary investment in local communities, whether it be through improvements in the quality of residential or commercial options, health services, recreational space, industrial redevelopment, or other positive outcomes.

Brownfield Program measures of success include an increasing number of applicants to the Program and an increase in frequency with which lenders are requiring brownfields agreements. Lender trust in the Program is evidenced by the completion this year of a project with a major bank as the prospective developer, facilitating the development of a bank branch on abandoned property.

## **Local Governments**

The Program's outreach efforts support local governments as they apply for competitive U.S. EPA brownfields grants, and, after awards have been made, assessment or cleanup to facilitate the redevelopment of brownfields properties. Efforts to increase awareness of the Program by local governmental entities include participation at EPA-sponsored brownfields conferences such as "Meet the State" at the bi-annual national EPA brownfield conference and at the annual EPA regional "New Grantee" meetings in which state NC brownfields representatives meet and discuss potential projects with EPA Brownfields Grant awardees within North Carolina. The Program staff work with local government grantees as they develop plans for utilizing the grants, review sampling and analysis plans, and work directly with any local prospective developers who need brownfields agreements to facilitate their redevelopment projects.

The outcomes of local brownfields activities across the state are increasingly impressive as the number and experience of local grantees grows. These grants serve to strengthen overall interest in brownfields redevelopment statewide and spark interest from developers seeking brownfields agreements through the Program. These grant funds dovetail with DEQ's efforts to support brownfields redevelopment, because the EPA continues to strongly recommend that grantees seek entry into the Brownfields Program to ensure an alignment with state interests as the grantees utilize their grant funds. In this way, DEQ's efforts are truly in coordination with those of EPA at the federal level and provide cohesive support to local government redevelopment teams throughout North Carolina.

## Program Inventory

The Brownfields Program's inventory consists of three categories of projects, explained below.

**Finalized brownfields agreements** are those projects that have a signed and recorded brownfields agreement (or have completed the public notice phase of the brownfields process and are waiting for the completed agreement to be signed). As of Sept. 30, 2015, the Program has finalized a cumulative total of 357 brownfields agreements across the state, 39 of which were completed in the one-year period from October 1, 2014 to September 30, 2015. A list of those brownfields agreements finalized during FFY15 is provided in the Appendix.

**Active eligible projects** have been deemed eligible for a brownfields agreement under BPRAs statutory criteria. Developers are working with the Division of Waste Management in some stage of data gathering, analysis or agreement negotiation. As of Sept. 30, 2015, there were 157 active eligible projects. Projects at this stage receive guidance from the Division of Waste Management as the developers gather the additional data needed to ensure protection of public health and the environment. Once research is complete, the Division of Waste Management analyzes the data, evaluates risks, determines what actions must be taken to adequately address the risks, drafts and negotiates the terms of the brownfields agreement with the prospective developer, and approves initiation of the statutory 30-day public comment period.

**Projects pending eligibility** are in the initial stage of the brownfields process as they apply for entry into the Program. Sites in this category have yet to meet the requirements under the statute for eligibility for a brownfields agreement. For sites in this category, the Program has requested clarification or additional information from prospective developers regarding a site. Normally, developers respond to these requests for clarification, the sites are deemed eligible, and sites then quickly move into the active eligible category. As of Sept. 30, 2015, 27 sites were pending eligibility.

## Improving Effectiveness

### Leveraging Resources into Private Sector Investment

Another measure the Program tracks is committed private investment facilitated by brownfields agreements. Developers provide the estimated investment figure in their application for entry into the Program. **The cumulative total private investment facilitated by the Program from its inception is now approaching \$11 billion, with nearly \$700 million of that being added by projects for which brownfields agreements were finalized this year.** Generally, these investments would not have been made in brownfields redevelopment areas, and often not made at all, without the liability relief provided by a brownfields agreement. Throughout its existence, the Brownfields Program has provided a high economic development value for the federal funds it uses, and it uses no state appropriation. Furthermore, the high ratio to which the funds have been successfully leveraged into

private development dollars for brownfields redevelopment is just one measure of the effectiveness of the BPRA. The economic activity and increased tax base generated by construction and subsequent use of these brownfields projects exceed the public funds expended by many orders of magnitude.

### **Continued success of Redevelopment Now Program Option**

The Program continues to see a high level of interest in the Redevelopment Now Program option. Under this option, a developer pays a higher fee and has access to a nearly dedicated project manager and immediate attorney services, significantly reducing the time to complete a brownfields agreement from the typical 18 months to as little as five-to-six months. Since these particular project managers are without federal subsidy, the fee is a significantly higher at \$30,000 as opposed to the normal \$8,000 fee. This option has proved to be a popular choice by developers of high-value projects where the cost of carrying financing for the normal queue process far exceeds the fee for a separate project manager. Of the Program's 39 completed agreements, 14 were in the Redevelopment Now option. In this way, the Program is bringing redevelopment projects and their intended public benefits to fruition more expediently.

### **Continuing to Develop Innovative Products to Facilitate Redevelopment**

The Program has developed and implemented a concept it calls "Ready-for-Reuse Brownfields Agreements." These brownfields agreements are developed with the help of a Proxy Prospective Developer, an entity who might face eligibility challenges but who brings to the Program's attention a redevelopment project that has significant public benefit. The agreement is developed in advance of having an identified future prospective developer. The agreement includes all of the safety elements the Division of Waste Management deems necessary (based on data obtained and actions taken voluntarily by the ineligible property owner) but has no entry indicated on the application for the name and signature of a future prospective developer. Such a "Ready-for-Reuse" agreement is very useful in marketing the property to potential prospective developers who might be interested in purchasing the property for redevelopment when they know their liability will be limited to the items in the agreement. Coming into this year, two such agreements had been completed, one of which had facilitated a sale to a new owner for redevelopment. This year an additional agreement was completed and it also facilitated a sale. Two others made significant progress towards completion and there is significant interest in both by prospective purchasers such that facilitated sales on both properties are anticipated to take place next year.

## **Fund Status**

The Program receives no state appropriation and exists through two funding sources: federal cooperative agreement funds and fee receipts. All of the brownfields fees charged by the Program are deposited into the Brownfields Property Reuse Act Implementation Account as authorized under the statute. While the majority of Program funding still comes from the federal cooperative agreement, the fee funds are used by the Program to supplement the federal cooperative agreement funds and, thus, play a key role in the Program's capacity to produce brownfields agreements.

For the state fiscal reporting year from July 1, 2014 through June 30, 2015 the Brownfields Property Reuse Act Implementation Account had a beginning balance of \$753,911, receipts from fees and interest of \$1,165,314, and disbursements of \$162,488. This yields an ending fund balance of

\$1,756,737. Table 3 below shows the fund status for the last 5 years.

**Table 3. Brownfields Property Reuse Act Implementation Account Balances**

State Fiscal Year	Year-End Fund Balance
2009	\$361,300
2010	\$216,913
2011	\$308,237
2012	\$363,472
2013	\$636,665
2014	\$753,911
2015	\$1,756,737

The increase in the balance this year is due to a number of factors, including reduced attorney expenditures through the Program’s agreement processing reforms, a greater number of applications received during FFY15, and the continued success of the Redevelopment Now Program option. The Program has managed to increase its funding in order to meet increased Program demand. In response, the Program hired two permanent fee-funded positions and plans to hire at least one more in FFY16 to meet the increasing demand for the Program’s services. However, if there are deeper than anticipated federal cuts in brownfields cooperative agreement funds, the Program’s federally funded positions may also be shifted to fee-funded positions. Plans for increasing the Program capacity must also include increased resources dedicated toward increasing compliance monitoring resources as the number of brownfields agreements requiring compliance monitoring and maintenance of land use change continues to increase.

### **Further Information**

For additional information on the Brownfields Program, please visit our Website at [www.ncbrownfields.org](http://www.ncbrownfields.org).

**APPENDIX**  
**Brownfields Agreements Finalized Between**  
**October 1, 2014 through September 30, 2015**

**39 FINALIZED BROWNFIELDS AGREEMENTS**

<p><b>4th and Broad Street</b>  Southeast Corner of West 4<sup>th</sup> Street &amp; North Broad Street  Winston-Salem, Forsyth County  PD: Tight Lines Partners, LLC</p>	<p><b>Creative Dyeing</b>  417 E. Charlotte Avenue  Mount Holly, Gaston County  PD: CaroMont Health, Inc.</p>	<p><b>Hendrick Durham Auto Mall</b>  409 S. Roxboro Street and 464 E. Pettigrew Street  Durham, Durham County  PD: Durham Partnership Group, LLC</p>
<p><b>955 Brookstown Ave – RN</b>  955 Brookstown Avenue  Winston-Salem, Forsyth County  PD: Fourth Street Ventures, LLC;  Lennar Multifamily Communities Co. and Commercial Realty Advisors, LLC</p>	<p><b>Crown Honda</b>  7001 E. Independence Blvd.  Charlotte, Mecklenburg County  PD: TT of Harris, LLC</p>	<p><b>Highland Business Park</b>  12 Old Charlotte Hwy  Asheville, Buncombe County  PD: Clan Highland, LLC</p>
<p><b>Amerlink</b>  7991 Beasley Road  Gold Rock, Nash County  PD: Eastern Holdings, LLC</p>	<p><b>Dollar General - Burlington</b>  1031 S. Williamson Avenue  Burlington, Alamance County  PD: DG Strategic II, LLC</p>	<p><b>Imperial Tobacco Campus II</b>  710 Atlantic Avenue  Greenville, Pitt County  PD: City of Greenville</p>
<p><b>AquAir Facility</b>  13300 Sam Neely Road  Charlotte, Mecklenburg County  PD: TKC Land Development II, LLC</p>	<p><b>Ecusta Tract E</b>  1 Ecusta Road  Brevard, Transylvania County  PD: Davidson River Village, LLC</p>	<p><b>JH Duncan Oil</b>  543 East Main Street  Franklin, Macon County  PD: The Land Trust for the Little Tennessee, Inc.</p>
<p><b>Caroline Courtyard</b>  North Generals Boulevard  Lincolnton, Lincoln County  PD: Caroline Courtyard, LLC</p>	<p><b>Ecusta Tract F</b>  1 Ecusta Road  Brevard, Transylvania County  PD: Davidson River Village, LLC</p>	<p><b>Kolortex II</b>  2810, 2900 and 2910 Horseshoe Lane  Charlotte, Mecklenburg County  PD: Carolina Realty Holdings, LLC</p>
<p><b>Charlotte Casket Co</b>  1305; 1309, 1311, 1313, 1315, 1317, 1319, 1321, 1323, 1331, and 1337 Central Avenue  Charlotte, Mecklenburg County  PD: TriBridge Residential, LLC</p>	<p><b>Gastonia Poplar</b>  1925 W. Poplar Street  Gastonia, Gaston County  PD: Gastonia Poplar Investments, LLC</p>	<p><b>Moore Place</b>  2435 Lucena Street  Charlotte, Mecklenburg County  PD: Charlotte Center for Urban Ministry, Inc</p>
<p><b>Colonial Abrasives</b>  312 S. Pine Street  Aberdeen, Moore County  PD: Gilder Holdings, LLC</p>	<p><b>Green Valley Office Park</b>  706, 708, 802, 804, and 806 Green Valley Road  Greensboro, Guilford County  PD: SL Green Valley, LLC</p>	<p><b>National Color Graphics</b>  1201 Central Avenue  Charlotte, Mecklenburg County  PD:  CW Construction &amp; Development, LLC</p>
<p><b>Craighead</b>  308 Craighead Rd; 3712 Philemon Ave  Charlotte, Mecklenburg County  PD: MREC Vison Craighead, LLC</p>	<p><b>Grey Hosiery Mill</b>  301 Fourth Avenue East  Hendersonville, Henderson County  PD: City of Hendersonville</p>	<p><b>Olympic Mill</b>  1601 Yanceyville Street  Greensboro, Guilford County  PD: SHVF Olympic, LLC</p>

<p><b>Orbit Energy</b>  600 Johnson Road  Charlotte, Mecklenburg County  PD: Orbit Energy Charlotte, LLC  c/o Bluesphere Corporation</p>	<p><b>PTH Park</b>  Lee Avenue and Juno Drive  Sanford, Lee County  PD: PTH Properties, LLC</p>	<p><b>The Standard at Boone</b>  784, 862, 862-B Blocking Rock Rd;  339, 325, 311, 299 Faculty St and  three unaddressed parcels  Boone, Watauga County  PD: The Standard at Boone, LLC</p>
<p><b>Owen Manufacturing Co.</b>  875 Warren Wilson College Rd  Swannanoa, Buncombe County  PD: National Wiper Alliance, Inc.</p>	<p><b>R.P. Scherer</b>  2021 E. Roosevelt Blvd.  Monroe, Union County  PD: Mac, LLC</p>	<p><b>West Lee Street Shopping Center</b>  801-829 West Lee Street  Greensboro, Guilford  PD: Weidl Properties II, LLC</p>
<p><b>Park Suzuki</b>  2307 &amp; 2309 North Main Street  High Point, Guilford County  PD: Parks Holdings, LLC &amp; N. S. Neill</p>	<p><b>Residences at Gateway Village – RN</b>  W. 5th St; N. Sycamore St; N. Irwin  Ave; West Trade Streets  Charlotte, Mecklenburg County  PD: Dominion Realty Partners, LLC</p>	<p><b>West Penn Hardwoods- RN</b>  1405 Deborah Herman Road, SW  Conover, Catawba County  PD: PAARK Properties, LLC</p>
<p><b>Powerhouse Square</b>  116 N. West St, 505 &amp; 513 W. Jones  St, and 125 Harrington Streets  PD: SCP York Powerhouse, LLC</p>	<p><b>Stanhope Center</b>  3021 Hillsborough St  Raleigh, Wake County  PD: Stanhope 2013, LLC</p>	<p><b>Wetsig Yachts</b>  4022 Market Street  Wilmington, New Hanover County  PD: Fertile Ground, LLC</p>
<p><b>Prestige Labels</b>  151 Industrial Drive  Burgaw, Pender County  PD: Hobbs Goodwin</p>	<p><b>The Foundry</b>  601, 619 &amp; 623 Cedar Street  Charlotte, Mecklenburg County  PD: Foundry Uptown, LLC</p>	<p><b>White Flower</b>  1905, 1909, 1913, 1919, 1923, 1927,  1931 E. 7th Street  Charlotte, Mecklenburg County  PD: 7th Street Progression Partners,  LLC</p>