



Creative Policy Solutions for Brownfields

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Redevelopment Economics

Representative Engagements:	Client:
Brownfields Plans and Strategies	Portland Metro, City of Portland, Carlisle, Centralina COG
Brownfields Policy Analysis	State of Washington Department of Ecology
Tax increment Financing Feasibility	Carlisle, PA
TIF Policy Analysis	State of MD Sustainable Growth Comm.
Economic, Fiscal, and Envir'l Impacts of Brownfields/ Redevelopment Programs	Massachusetts, New York, Oregon, Maryland, and US EPA
Economic Impact of Redevelopment Projects	New Markets/Brockton, MA; TOD/Baltimore; TIF/Baltimore; HUD 108/Ranson (WV)
Green Job Strategy	Allegheny River Towns Enterprise Zone
Redevelopment Financing Assistance	Washington County PA; Three developers
Market Analysis	Philly Musician's Live-Work Lofts
Sustainable Energy linked to Redevelopment	NYSERDA



Financial Incentives – State Scoreboard

- Programs eliminated:
 - Michigan Single Business Tax Credit
 - Louisiana Brownfields Tax Credit
 - California Redevelopment Authorities
- Bond issues expiring
 - Pennsylvania
 - Ohio
 - Michigan
- New programs:
 - Mississippi tax incentive
 - Washington State Brownfield Renewal Authorities
- Improved programs
 - Tennessee and Maryland TIF tie-ins
 - Connecticut – more \$\$
- Renewed programs
 - Massachusetts Brownfields Tax Credit
 - New York State Brownfields Cleanup Program
 - Florida Jobs Bonus Refund Prog.

Impact analysis aids renewal

Massachusetts Brownfields Tax Credit

- 25-50 % of cleanup costs, restricted use/unrestricted use
- Transferable
- No overall cap;
- No project ceiling
- Impacts:
 - \$54 investment leveraged by \$1 BTC
 - More than 7,000 jobs
 - Over 10 years Commonwealth gains more than \$8 in tax revenues for every \$1 in BTC outlay
 - VMT reduction – 45%/residential; 25%/commercial
 - “Saves” 22,100 metric tons of CO₂, (same as taking 4,300 cars off the road each year)

Whitin Mill, Alternatives, Whitinsville



Fiscally-responsible tax incentive:

Mississippi Brownfields Tax Incentive

Mississippi Economic Redevelopment Act –

- Requires approval of the remediation plan by MDEQ and the project by the Mississippi Development Authority
- All State sales, income and franchise taxes from business occupants are diverted
- Diverted revenues are used to reimburse developers for approved cleanup costs, as follows:
 - 100 % of diverted taxes for 6 years, stepped down to 50% in year 10.
 - Up to 2 ½ times the allowable remediation cost.

Dedicated funding source drives brownfields investments:

Hennepin and Ramsey Counties Environmental Response Fund

- Funded by a mortgage registry and deed tax at a rate of .0001 (1/100th of 1 percent) of the value of a property transaction amount
- Funds assessment and cleanup of contaminated sites
- Hennepin County:
 - \$34+ million funded
 - 245 grants.
 - Award \$2 – 3 Million/year.

TOD and ERF



Minneapolis, 5 Points



Minneapolis, Franklin Steele Commons

TIA, ERF, and Superfund Site



Minneapolis, Hiawatha Business Center

Creative Use of TIF Incentives for Brownfields

Kentucky for Signature Project TIF Program

State revenues into the TIF (state real property taxes, sales taxes, individual and corporate income taxes, and limited liability entity taxes) if:

- Demonstrates net positive revenues to the state;
- Meets three of seven findings related to economic distress and blight;
- Exceeds \$100 million investment;
- Involves mixing uses with no more than 20 percent retail.

Maryland 2013 TIF Reforms

- Expanded uses of funds include cleanup, site prep, historic preservation, and private garages
- Adjustable base for Brownfields sites

Tennessee TIF Reforms

- Allows localities to use sales taxes in a brownfields TIF

Brownfields Incentives

New Visions for Old Tools



Indiana –

- Supplemental Environmental Projects to fund brownfields

Boston - \$69 HUD 108 loan pool, “Boston Invests in Growth.”

- Mezzanine financing linked to job creation

Washington – Brownfield Renewal Authorities

- Better liability protections
- New assistance to private prospective purchasers
- Priority for State funding

Ohio – Loan proceeds from Water Facility Bonds

- Low interest loans for site preparation, as well as cleanup.

VCP Programs – Effective Regulatory Programs Stimulate Brownfields Investments



Criteria

- Strong liability release
- Fast – most sites completed in 1 year
 - Staffing to eliminate backlog, or
 - LSRP
 - Use of presumptive remedies
- User-friendly attitude
- Predictable

States - high marks from the private sector

- Massachusetts
- Pennsylvania
- Ohio
- Wisconsin

Nature of the Liability Release



Weak	strong
Negotiated	Automatic
Available at conclusion of cleanup	Available when the property is being acquired
No withdrawal rights; potential penalties for failure to adhere to a schedule	Withdrawal without incurring liability
Affirmative defense	Liability exemption
Liability defense is only available through State regulatory program	Self-administering affirmative defense (BFPP)
Re-opener for new discovery	Re-opener for new discovery only for RP
Protects against state enforcement action only	Protects against third party actions (contribution, property damage, diminution of value, and toxic tort)



Aggressive Liability Protections

Pennsylvania – Public Agency Protections

- Claims under common law
- Property damages
- Diminution of property claims
- Natural resources damages
- Economic loss
- Bodily injury or death (e.g., toxic torts)
- Protects officers, directors, employees and consultants specifically protected

Third Party Liability Protections through VCP

- Connecticut
- Georgia
- Connecticut
- Oregon

Aggressive Liability Protections, cont.

Maryland

- “Inculpable Person” Status letter.
- Withdrawal provisions

Connecticut

- Innocent purchaser – not liable for area groundwater contamination

Michigan

- Self-administering liability protection for innocent purchasers.
- Developer assesses the pre-existing contamination - immune from liability for the identified contamination.
- “Due care” obligations - “to not allow an unacceptable exposure to contamination.”

How to make progress on brownfields without new state \$\$

- Examine the regulatory side for speed, certainty, and improved liability protections;
 - Consider LSRP
- Examine TIF-brownfields tie-ins
- Make better use of CDBG, HUD 108, CWSRF
- Use insurance archeology
- Use Supplemental Environmental Projects
- Establish a pooled environmental insurance program
- Use land banks for brownfields
- Enhanced powers for redevelopment authorities



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