

PROMOTING SMART GROWTH: BROWNFIELD DEVELOPMENT

A Policy Brief by the Center for State Innovation

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DISCUSSION

Unfortunately, the goal of preserving undeveloped areas often comes into conflict with the need for a vital economy. Under current development standards, it is easier to invest in undeveloped areas, and the result is the low-density development pattern that has come to characterize urban sprawl.

And while existing brownfield projects have proven successful, as of 2000, the National Governor's Association reported roughly 90 percent of brownfield sites had yet to be redeveloped.

The greatest challenge to pursuing smart growth through the revitalization of brownfield sites is the need to level the playing field between greenfield and brownfield development. One of the reasons why greenfield development is so pervasive is that it is relatively easy compared to brownfield development. Brownfield development poses a substantial financial and administrative burden because of the need for environmental remediation. The risk of liability under the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) discourages investors from buying, transferring, or developing potentially contaminated property because all owners of a property, past and present, are liable for the costs of remediation, even those owners who did not directly contribute to the contamination. Because of the risk of liability for the acts of others, the law indirectly promotes sprawl by making brownfield development legally (and therefore financially) unattractive.

Preventing urban sprawl is important for a number of reasons. First, keeping residential neighborhoods closer to the city center reduces commuting times, lowers pollution, and maintains a healthier work/family balance. Second keeping wealthy and middle class workers in the city center and away from sprawling suburbs adds economic diversity to urban communities and improves the municipal tax base. Finally, preserving undeveloped land on the periphery of our urban centers creates opportunities for recreation and agriculture on land that would otherwise be used for suburban development.

Many states have begun to combat sprawl by revitalizing urban areas through what is known as brownfield development. Brownfield sites are abandoned contaminated industrial areas that pose a health risk to the surrounding community. The central goal of any brownfield program is to make urban redevelopment an attractive alternative to expansion on the periphery of an urban area. Brownfield development promotes sustainable economic growth by revitalizing older urban areas, while simultaneously protecting existing green space.

Congress and the federal Environmental Protection Agency (EPA) define a brownfield site as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." Brownfields tend to be older, typically urban areas that are either underused or abandoned because of loss of blue-collar jobs. These sites are not redeveloped because of known or perceived contamination.

About CSI

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Once perceived solely in terms of environmental cleanup, brownfield development has come to be seen as integral to growth management and sustainable economic development. In addition to helping to remedy an obvious public health risk, brownfield redevelopment has become an increasingly viable “smart growth” strategy.

Many states have taken steps to limit the risk to future owners through voluntary cleanup programs (VCPs). These programs take different forms in different states, but the general idea is that in return for private sector remediation of a brownfield site, the state agrees to release the remediator and future owners from liability.

An important part of state VCPs is a memorandum of understanding between states and the federal EPA. A MOU is necessary because federal law on brownfield liability supersedes state laws. The result is that even if a landowner is released from liability by the state, federal liability remains. Typically, a MOU between a state and the EPA will provide that the EPA does not anticipate taking action regarding a brownfield site that participates in a VCP unless there is an imminent and substantial risk to the community.

Example of State VCP

The Texas Commission on Environmental Quality provides the following description of its VCP: “The Texas VCP provides administrative, technical, and legal incentives to encourage the cleanup of contaminated sites in Texas. Since all non-responsible parties, including future lenders and landowners, receive protection from liability to the state of Texas for cleanup of sites under the VCP, most of the constraints for completing real estate transactions at those sites are eliminated. As a result, many unused or under used properties may be restored to economically productive or community beneficial use. Also under the VCP, site cleanups follow a streamlined approach to reduce future human and environmental risk to safe levels.”

COSTS

Brownfield development projects require a number of steps: site acquisition, environmental assessment, cleanup, demolition, site preparation, and construction. Project costs largely depend on expectations regarding future site use. In general, the greatest costs tend to lie in site acquisition and preparation. Variability in costs aside, the return on investment is sizable. A working paper from the Northeast-Midwest Institute calculates that every \$1 of public investment in brownfield sites results in approximately \$8 in total investment. The paper also estimates that government subsidies for site assessment, cleanup, and preparation can leverage private investment at a ratio of \$20 for every \$1 public investment.

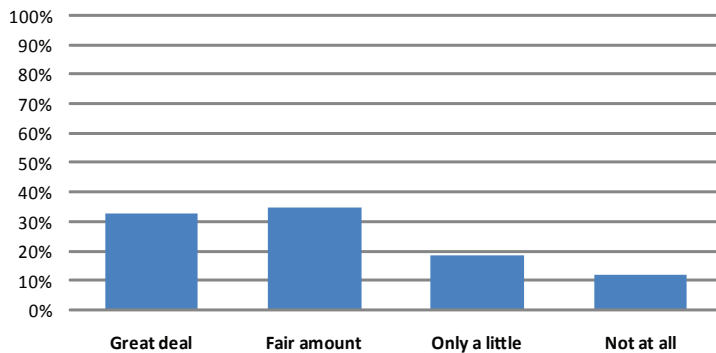
The demand for capital arguably constitutes the biggest barrier to redevelopment. Brownfield programs would be nearly impossible to implement without financial assistance from the public sector. There are a number of ways in which governments can help to increase the amount of capital available for redevelopment projects. Governments can provide funding directly, they can provide incentives designed to encourage developers to invest, or they can make it easier for developers to borrow capital, by reducing the risk to lenders, or by making it cheaper for developers to borrow. States can also facilitate development by acting as the central repository of brownfield-related information within the state. Both the National Conference of State Legislators and the Northeast-Midwest Institute provide extensive lists of sources of federal funds for brownfield development.

While state and local governments have proven adept at finding a range of ways to fund brownfield projects, tax increment financing (TIF) is becoming an increasingly prominent funding strategy. According to the Northeast-Midwest Institute, TIF “freezes the taxes at a site’s pre-development levels and then uses the expected post-development increases in taxes as a revenue stream to finance a bond or loan which then pays for the upfront (infrastructure) costs.” It is imperative that states interested in

supporting urban revitalization align TIF requirements with the unique demands posed by brownfield development. On the one hand, excessive TIF restrictions may limit the extent to which they can be used to fund brownfield initiatives, effectively eliminating a significant source of funding. On the other hand, there is evidence that in the absence of adequate regulations, TIF funds can be directed towards projects that do little to combat urban blight and may actually end up promoting suburban sprawl.

CHART 1

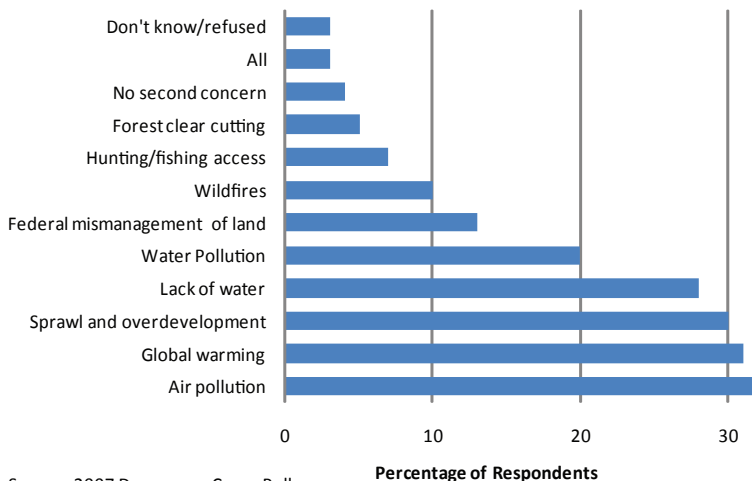
How much do you personally worry about urban sprawl and loss of open spaces?



Source: Gallup Poll (March 2008)

CHART 2

Which two of the following do you think are the biggest environmental concerns facing our community?



Source: 2007 Democracy Corps Poll

PUBLIC PERCEPTION

Unconstrained development is currently seen as one of the country's most pressing environmental problems. A 2007 Democracy Corps poll reveals that Americans think that the issue of sprawl is on par with air pollution and global warming (see Chart 1, at left).

Similarly, a Gallup Poll (March, 2008) reports that 68 percent of respondents said that they worried a great deal or a fair amount about urban sprawl and the loss of open spaces (see Chart 2).

TALKING POINTS

States often promote brownfield development by protecting Voluntary Cleanup Projects (VCPs) from prosecution under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Are communities being put at risk?

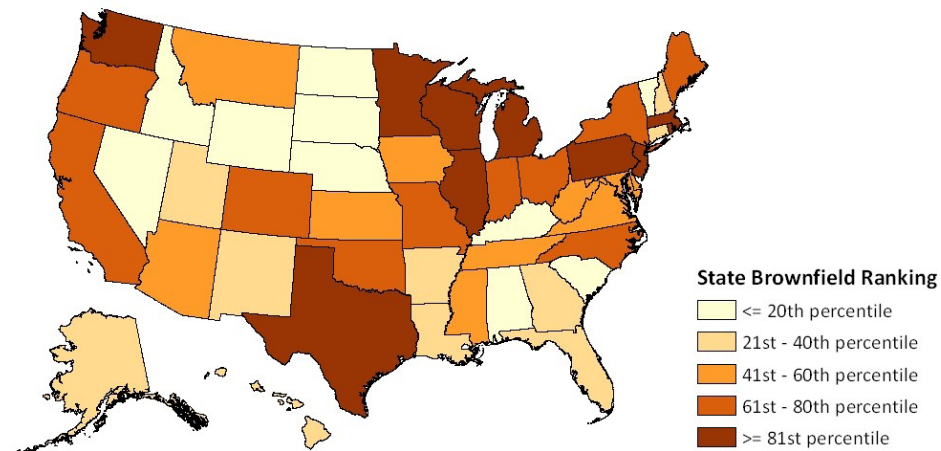
No, remediation under a voluntary cleanup program must still meet specified standards to protect the health of nearby communities.

In addition, the best remediation projects involve the community in the project. Brownfield development inevitably raises questions about environmental justice. Neighborhoods surrounding older industrial areas tend to be largely composed of minority and/or low-income populations, meaning that members of these communities have been disproportionately exposed to the environmental hazards associated with living near a brownfield site. Many of the environmental regulations that currently impede brownfield development are intended to prevent the perpetuation of this type of inequality. Consequently, working with local communities is of paramount importance. Proponents of urban revitalization have explicitly noted that the success

of brownfield initiatives depends, in part, on the recognition of community members as equal stakeholders. A report outlining community involvement strategies is available through the Northeast-Midwest Institute.

WHO ELSE IS DOING IT?

Protected from CERCLA enforcement through an Environmental Protection Agency Memoranda of Agreement (MOA), state Voluntary Cleanup Projects (VCPs) have traditionally served as the primary means through which brownfield development has been pursued. As of 2006, the EPA reported in State Brownfields and Voluntary Response Programs that 43 states had completed cleanup on at least one VCP site. There is, however, substantial variation in the magnitude of VCP efforts. As to be expected, brownfield initiatives are most prominent in the rustbelt states stretching from the East Coast to the Upper Midwest. Significant inroads are also being made along the West Coast.



SPOTLIGHT ON INNOVATION

Massachusetts: At least in terms of scope of effort, Massachusetts is far and away the leader in brownfield development. Former Governor Argeo Paul Celluci was instrumental in the success of the Massachusetts program, issuing an executive order in 1996 entitled "Planning for Growth." The order directed state agencies to increase interagency coordination, consider local and regional growth plans, streamline regulations, help with implementation, and provide financial incentives and technical assistance for local planning. In 1998, Celluci signed the Brownfields Act which provided both financial incentives and liability relief. Of particular note, the 1998 legislation created the Brownfields Redevelopment Access to Capital Program (BRAC), a state-subsidized environmental insurance program that is currently being privately implemented by the Massachusetts Business Development Corporation (MBDC).

Idaho: Though brownfield development has been most prominent in rustbelt states, it is becoming an increasingly important part of efforts to promote development in the West. A recent report by the Progressive States Network and Western Progress cites Idaho's Community Reinvestment Pilot Initiative as a notable best practice for states interested in developing a "restoration economy." Established as part of the Idaho Land Remediation Act, passed in 2006 by former governor Jim Risch, the program provides up to \$150,000 to 10 brownfield development projects around the state.

WHAT CAN YOU DO?

Model brownfield legislation is available through the Environmental Law Institute. The National Governors Association reports that recent state efforts have emphasized the importance of incorporating brownfield development into state and regional growth and land-use planning. Moreover, the NGA finds that “[t]he most effective and innovative state brownfields programs include voluntary cleanups, liability relief, remediation requirements, public participation, and financial incentives,” noting that, in general, the following factors contribute to brownfield success:

- Having the governor provide clear and public support.
- Viewing brownfields from an area-wide perspective.
- Integrating brownfield cleanup and redevelopment into state growth planning.
- Broadening state brownfield programs to include state planning and local government agencies.
- Working to eliminate barriers to brownfield development (e.g., liability).
- Improving incentives for brownfield projects.
- Considering brownfield development in terms of the principles and practices of ‘smart’ community design.
- Ensuring the protection of public health while simultaneously shifting emphasis to economic development.

As these goals suggest, when done right, brownfield development is an important tool to promote economic growth. With this in mind, it is important to recognize that not all paths to brownfield development are created equal. In general, states promote brownfield development by lowering barriers and providing incentives. While it is important to encourage development by lowering developers’ liability for environmental remediation, it is important that the communities affected by the development project not be put at risk. Smart development requires community involvement. Similarly, while financial incentives such as TIFs are an important development tool, when not properly targeted, they risk becoming ineffective and even counterproductive.

RESOURCES

Policy Reports

Environmental Law Institute

- Model Brownfields Legislation
www.eli.org/pdf/research/ModelBrownfieldsLegislation.pdf

Environmental Protection Agency

- Brownfields and Land Revitalization
www.epa.gov/brownfields/
- “Financing Brownfields: State Program Highlights”
www.epa.gov/swerosps/bf/partners/finan_brownfields_epa_print.pdf
- “State Brownfield and Environmental Response Programs: An Update from the States”
www.epa.gov/brownfields/pubs/st_res_prog_report.htm

Good Jobs First

- “TIF, Greenfields, and Sprawl: How an Incentive Created to Alleviate Slums Has Come to Subsidize Upscale Malls and New Urbanist Developments”
www.goodjobsfirst.org/pdf/apa.pdf

Joseph W. Dorsey

- “Brownfields and Greenfields: The Intersection of Sustainable Development and Environmental Stewardship”
journals.cambridge.org/download.php?file=%2FENP%2FENP5_01%2FS1466046603030187a.pdf&code=bc0e47fba40e102581bc6fe8a66d382c

Massachusetts Business Development Corporation (MBDC)

- Brownfields Redevelopment Access to Capital Program (BRAC)
www.mass-business.com/site/site-massbiz/content/brownfields/

Michael Greenberg, Karen Lowrie, Henry Mayer, K. Tyler Miller, and Laura Solitare

- “Brownfield Redevelopment as a Smart Growth Option in the United States”

National Conference of State Legislators

- “Financing Brownfields Cleanup and Redevelopment”
www.ncsl.org/print/enviro/financing_brownfields.pdf

National Governors Association

- “New Mission for Brownfields: Attacking Sprawl By Revitalizing Older Communities”
www.nga.org/Files/pdf/REPORT200010BROWNFIELDS.pdf

Northeast-Midwest Institute

- “Community Involvement in Brownfield Redevelopment”
www.nemw.org/CommunityInvolve.pdf
- “Getting Started with Brownfields—Key Issues and Opportunities: What Communities Need to Know”
www.nemw.org/brownfield%20getting%20started.pdf
- “State Brownfield Financing Tools and Strategies”
www.nemw.org/BFStateFinTools.pdf
- “Using Tax Increment Financing for Brownfields Redevelopment”
www.nemw.org/BrownfieldsTIF-ER.pdf
- Working Paper: “The Environmental and Economic Impacts of Brownfields Redevelopment”
www.nemw.org/EnvironEconImpactsBFRedev.pdf

Progressive States Network and Western Progress

- “Building a Restoration Economy: Legislation and Practices at the State Level”
www.mtvotersedfund.org/links/building_a_restoration_economy_legislation_and_practices_at_the_state_level

Resources for the Future

- “The Brownfield Phenomenon: Much Ado about Something or the Timing of the Shrewd?”
www.rff.org/rff/documents/rff-dp-04-46.pdf

Opinion Polls

Democracy Corps and Greenberg Quinlan Rosner Research

- Democracy Corps Poll (March 2007)
www.gqrr.com/articles/1867/2724_Democracy_Corps_March_7-14_2007_Interior_West_Survey.pdf

Gallup

- Gallup Poll (March 2008)
www.gallup.com/poll/104932/Polluted-Drinking-Water-No-Concern-Before-Report.aspx

State Programs

Texas

- Texas Commission on Environmental Quality, Voluntary Cleanup Program
www.tceq.state.tx.us/remediation/vcp/vcp.html

State Legislation and Executive Orders

Idaho

- Idaho Statutes Title 39, Chapter 72: "Idaho Land Remediation Act."
law.justia.com/idaho/codes/39ftoc/390720011.html
- Idaho Land Remediation Act
www3.state.id.us/idstat/TOC/39072KTOC.html

Massachusetts

- 1996 Massachusetts Executive Order 385: "Planning for Growth"
www.lawlib.state.ma.us/ExecOrders/eo385.pdf
- 1998 Massachusetts Chapter 206 "Brownfields Act"
www.mass.gov/legis/laws/seslaw98/sl980206.htm