



# NCSL STATE LEGISLATIVE REPORT

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## **Financing Brownfields Cleanup and Redevelopment**

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### **Introduction**

Brownfields come in all shapes and sizes and in all locations—from manufacturing plants to gas stations to strip malls to agricultural operations in urban, suburban and rural areas. These sites have been redeveloped into economic centers, recreational areas and open spaces. How to pay for the redevelopment of these sites is an evolving topic that combines the use of public and private financing tools, including a variety of funding sources, and ensuring that public and private dollars are spent wisely.

When developers convert brownfields to other uses, designing a financing package for assessment, cleanup and development can be the greatest challenge. Innovative financing techniques often are employed that include tax increment financing (TIF), bonds and special tax assessments from local governments, and state and federal funding.

A recent study by the International Economic Development Council, *Converting Brownfields to Green Space*, reported that, for the projects it studied, the public sector (state, federal and local governments) contributed approximately 67 percent of the funds. State and local funding constituted 90 percent of the public sector support.<sup>1</sup>

### **Costs Associated with Brownfields Redevelopment**

Brownfields conversion requires:

- Acquisition;
- Assessment;
- Cleanup;
- Demolition; and
- Site preparation and construction.

The costs of redevelopment hinge upon the future use of the site. Construction often requires the greatest funding amount for the project. Site preparation and acquisition also can be costly steps in completing redevelopment, while assessment and demolition activities often require the least amount of funding.

## Federal Grants

Communities that are concerned about sprawl have rated financial assistance to clean up brownfields as more helpful than any other type of federal funding provided for growth-related efforts, including transportation. Several federal agencies, including the Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA), the Economic Development Administration (ED) and the Federal Highway Administration (FHWA) have committed funds and technical assistance for brownfields redevelopment.<sup>2</sup>

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Additional federal funding programs that could be used if the redeveloped brownfields include parks and open space include the Land and Water Conservation Fund; the Urban Park and Recreation Recovery Program; the Urban and Community Forestry Program; the U.S. Army Corps of Engineers; and the River, Trails and Conservation Assistance Program.<sup>3</sup>

The recent Small Business Liability Relief and Brownfields Revitalization Act (PL 107-118) authorized funding of up to \$200 million per year for assessment and cleanup of brownfields. Up to \$50 million per year is provided for state response programs. The fiscal year (FY) 2003 EPA budget request included \$200 million (an increase of \$102 million) in funding to help states and communities clean up and revitalize brownfield sites. However, Congress reduced funding for the EPA brownfields grants program for local governments and nonprofit organizations by 25 percent—from \$120 million to \$90.5 million—in the omnibus spending measure for FY 2003. The funding cut could mean that the agency will be able to fund only 150 or 200 of the local government grants that it awarded in October 2002; nearly 1,000 applications were received for the grants. Congress did fund \$50 million for state brownfields grants. The agency's FY 2004 budget request includes a \$10 million increase above the funding requested in FY 2003 for the brownfields grants program.

EPA also provides Brownfields Assessment Demonstration Pilot Program funding of \$200,000 per project, which is awarded on a competitive basis; an additional \$50,000 may be awarded to communities that perform assessments for the purpose of creating green space for parks and recreation. EPA awarded \$14.6 million in Brownfields Assessment Demonstration Pilot Program funds in May 2002. According to the federal agency, these grants result in \$2.48 of private investment for every federal \$1 spent. To date, the EPA brownfields program has leveraged more than \$4 billion in public and private investments.

The EPA announced the availability of \$21.5 million in additional funds for brownfields projects in 17 states from the Brownfields Revolving Loan Fund program in May 2002. The fund provides low-interest and no-interest loans to businesses for brownfields projects.

Another EPA program, the Supplemental Environmental Project (SEP), allows the violator of federal environmental laws to voluntarily agree to undertake a project as part of an enforcement settlement and lower the cash penalty. The SEP improves, protects or reduces the risks to public health or the environment and involves activities beyond those the violator must undertake to be in compliance with the law. Projects related to brownfields redevelopment include pollution reduction and prevention and environmental restoration and protection.<sup>4</sup>

The U.S. Department of Transportation (DOT) administers the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), a \$200 million fund, the primary goal of which is to integrate transportation projects

with environmental and community revitalization goals. DOT allows funds to be used at brownfields sites where proposed bike paths and trail systems will be developed. The Transportation and Community and System Preservation Pilot Program, another TEA-21 component, awards grants to states, local governments and metropolitan planning organizations for planning and strategy implementation to improve transportation system efficiency. These funds can be used for riverfront development and greenway construction and for planning and environmental assessments for brownfields redevelopment.<sup>5</sup> DOT and the Federal Highway Administration also can award grants for bike and pedestrian projects

#### **The Brownfields Tax Incentive**

The Brownfields Tax Incentive was enacted as part of Public Law 106-554 in December 2000 to remove many of the financial disincentives to cleaning up and reusing older industrial property. Under the Brownfields Tax Incentive, environmental cleanup costs are fully deductible in the year they are incurred, instead of having to be capitalized. Although the tax incentive could cost the federal government \$300 million in annual tax revenue, the incentive is expected to leverage \$3.4 billion in private investment and return 8,000 brownfields sites to productive use. Previously, the Taxpayer Relief Act (PL 105-34) included a tax incentive to spur the cleanup and redevelopment of brownfields in distressed urban and rural areas.

in areas that seek to improve air quality under the Congestion Mitigation and Air Quality Program. The Kansas City Riverfront Heritage Trail Project has been able to combine DOT grants to finance one-third of the total cost for design and construction of the first phase of the trail.

The Department of Housing and Urban Development (HUD) relies on the Community Development Block Grant and Section 108 programs to promote neighborhood revitalization and the expansion of affordable housing and economic opportunities. These programs can be used for the rehabilitation and redevelopment of brownfields by supporting property acquisition, site preparation, public facilities and infrastructure, and other uses.

The Department of Commerce administers the Economic Development Adjustment Assistance Program, which helps Economic Development Administration-designated areas. Assistance can be used to support infrastructure improvements for brownfields projects.

The Land and Water Conservation Fund was created in 1964 with the revenues from offshore oil and gas receipts to support federal, state and local parks and conservation areas. Four agencies—the U.S. Department of Agriculture’s Forest Service and the Department of Interior’s National Park Service, Fish and Wildlife Service and Bureau of Land Management—receive congressional appropriations from the fund. The remaining funds are used for a matching grant program to assist state and local governments to acquire and develop recreational sites and facilities; local governments must work with state departments of natural resources to acquire funding. Since 1965, 37,000 grants have been awarded to state and local governments for acquisition, development and planning. A portion of the funding for the Charlestown (Mass.) Waterfront Park, part of the former Charlestown shipyard near Boston, came from a LWCF grant.

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The Department of Interior’s Urban Park and Recreation Recovery Program provides matching grants and technical assistance to economically distressed urban communities. The U.S. Forest Service’s Urban and Community Forestry Program and Urban Resources Partnership provide funds to urban areas for conservation and improvements to the environment. Technical and financial assistance is provided to cities for tree planting, urban park development, stewardship and natural resources education. Although the U.S. Army Corps of Engineers (ACE) does not have a brownfields program, it has resources to assist communities that are developing brownfields programs related to aquatic ecosystem restoration and

protection projects. ACE funding has supported waterfront redevelopment, acid mining drainage treatment systems and topsoil purchases. The National Park Service's Rivers, Trails and Conservation Assistance Program has provided a network of conservation and recreation planning professionals to help communities plan projects that led to converting abandoned railways into trails and developing parks, schoolyards and open spaces.

## State Financial Support

At the state level, most funds come from economic and community development programs, environmental protection programs, transportation, and parks and recreation funding programs. Several states provide grant funding, low-interest loans or tax incentives for various phases of brownfields redevelopment.

- The *Pennsylvania* Land Recycling Program includes an Industrial Sites Cleanup Fund to assist in voluntary cleanups—grants or low-interest loans can cover up to 75 percent of the cost of completing an environmental study and implementing a cleanup plan. A Job Creation and Tax Credit Program provides a tax credit of \$1,000 for each new job created at a brownfields site for companies that increase employment by 25 jobs or 20 percent within three years of beginning site remediation activities.
- *Oregon's* Economic and Community Development Department offers several forms of financial assistance—including credit enhancement agreements such as loan portfolio insurance and loan guarantees for environmental evaluations—and a Brownfield Redevelopment Loan Fund.
- *Ohio* voters approved \$400 million in general obligation bonds in November 2000 to create the Clean Ohio Fund—\$200 million is targeted toward brownfields projects and can be applied to any stage of redevelopment (assessment, site acquisition, cleanup, demolition, infrastructure upgrade or development).
- *Michigan* voters approved a \$675 million general obligation bond in November 1998 that includes \$335 million for brownfields redevelopment and related projects. The measure allocates up to \$263 million for cleanup of contaminated sites, and \$20 million for grants and loans to local governments that are involved in redevelopment projects.

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- *Massachusetts*' 1998 Brownfields Act earmarked \$15 million for an environmental insurance fund to pay for a portion of cleanup costs or to guarantee private loans; established a brownfields redevelopment fund that provides \$30 million in low-interest loans to private parties—and grants to local governments—for site assessment and cleanup; and authorized a tax credit of between 25 percent and 50 percent for those who undertake site cleanup.
- *Colorado* provides a tax credit for environmental cleanup and redevelopment projects in cities with a population of at least 10,000. The amount of the tax credit ranges from 50 percent of the initial \$100,000 for site remediation to 20 percent of the third \$100,000 spent on cleanup.
- *Minnesota*'s Metro Greenways program provides state funds to purchase fee title or development rights to properties that can be linked to preserve natural corridors in the Minneapolis-St. Paul area. The Department of Natural Resources is working with the Trust for Public Land and the city of St. Paul to purchase 27 acres of old railroad property along the Mississippi River to convert to open space. The state is contributing \$750,000 of the \$3 million purchase price and will hold a conservation easement on half the land.

*The Clean Water Revolving Fund programs have issued almost \$23 billion in loans since 1988.*

Clean Water Revolving Funds also can pay for wetlands construction, site remediation, land acquisition and conservation easements to assist with brownfields redevelopment. Currently, 51 Clean Water State Revolving Fund programs—one in each state and Puerto Rico—exist that operate like banks with capital funding from federal and state contributions. The revolving funds have more than \$27 billion in assets, which are used to make low-interest or no-interest loans for water quality projects. The revolving funds program has issued almost \$23 billion in loans since 1988. Funds are repaid to the revolving fund over periods of as long as 20 years. Repaid funds are used to fund other water quality projects. Brownfields mitigation projects to correct or prevent water quality problems may be eligible for this funding. Projects could include (but not be limited to):

- Excavation and disposal of underground storage tanks;
- Constructed wetlands to filter pollutants;
- Well capping;
- Excavation, removal and disposal of contaminated soil and sediments;

- Tunnel demolition; and
- Well abandonment.<sup>6</sup>

## Local Government Financing

More than half of local government funds used for brownfields redevelopment come from tax increment financing (TIF). Local bond financing, special improvement or assessment districts, and general funds account for the balance of spending.

TIF is a funding mechanism that allows future increases in tax revenue generated by the project to support the project. A redevelopment agency freezes tax assessments in a TIF district at a base year; in future years, the extra tax revenue is allocated to the TIF district to pay for redevelopment or to pay debt on TIF-backed bonds issued to fund the redevelopment. A brownfields TIF district could include a mixed-use (retail, residential, recreational, commercial and light industrial) development or a neighborhood adjacent to a brownfields site. Michigan amended its brownfields legislation in 1996 to authorize local governments to use TIF to help finance brownfields redevelopment. A brownfield authority may capture new property tax revenue generated by the redeveloped site and use it to reimburse cleanup costs.

TIF funding usually pays for development within the district, but some states allow funds to be used for projects outside the TIF district. Utah enacted a special authorization in 1999 to allow redevelopment agencies to use tax increments from an existing project area for cultural and recreational facilities in another project area. Affordable housing outside a TIF district also is eligible for a fund transfer. Salt Lake City relied on this legislation to allocate nearly \$1 million in TIF funds from the Central Business District Redevelopment Project area to the Park Blocks Project in order to bury railroad communications equipment and high-voltage power lines.

### Clean Water State Revolving Funds and Brownfields

The Grant Realty Company (Ohio) used a revolving fund loan to clean up a 20-acre industrial site in Cleveland to prepare the area for commercial reuse. The company remediated contaminated groundwater and soil; the source of repayment is the income stream from a tank cleaning operation, with a personal loan guarantee and a second mortgage as collateral. Grant Realty participated in the Voluntary Action Program administered by the Ohio Environmental Protection Agency; the program allows voluntary cleanup of contaminated property in exchange for a release from further cleanup activities.

Another Ohio company, Barberton Laundry and Cleaning, used a revolving fund loan to conduct site assessment work after private lenders were unwilling to finance the work. The project included soil and groundwater sampling to determine the extent of contamination and the scope of remedial activities needed to prepare the site for reuse. The loan will be repaid from their accounts receivable.

Wisconsin enacted legislation (Wis. Stat. §20.320 (1) (sm)) that allocates \$20 million of the state revolving fund for a Land Recycling Loan Program. Municipalities can use the funds to clean up contaminated properties. Interest rates will be half the market rate, and awards will be prioritized based upon the potential to reduce environmental pollution, threats to public health and development of pristine land.

Source: U.S. Environmental Protection Agency, *Funding Brownfield Remediation with the Clean Water State Revolving Fund*, (EPA 832-F-98-006 Washington, D.C.: U.S. Environmental Protection Agency, October 1998) <http://www.epa.gov/brownfields/html-doc/cwsrf.htm>.

*Local governments often use bonds to finance projects and services.*

Local governments often use bonds to finance projects and services. Use of bonds for redevelopment projects can spread the cost of the project over several years, and the debt can be repaid with future income from the project. Although not directly related to brownfields redevelopment, local voters have shown a willingness to approve bonds to finance open space purchases. Since the mid-1990s, voters have approved 85 percent of 459 bond measures to preserve green space and create parks, raising \$17.6 billion in new funding. To the degree brownfields redevelopment is viewed as a growth management strategy similar to open space preservation (in that urban revitalization can take the pressure off greenspace conversion to accommodate growth), local voters may be persuaded to support bond funding.

Special assessment districts are created to finance development or infrastructure projects. The local government levies a charge on property within a specific geographic area and the revenues are used to finance public improvements. The charge, which can be an *ad valorem* property tax assessment or a sliding scale fee, also can be one-time or periodic.

## **Conclusion**

The importance of brownfields redevelopment to state and local economic development, growth management and land conservation strategies has led to innovation in the design of financing packages. State grants, low-interest loans and tax incentives, in combination with local tax increment financing, has spurred activity to revitalize urban centers, renovate existing infrastructure, and diminish pressure on development of greenfields. Federal funds are playing a key role not only in initiating state and local projects, but also in leveraging financial investments from the private sector to increase the level of redevelopment activity.

## Notes

1. International Economic Development Council, *Converting Brownfields to Green Space* (Washington, D.C.: International Economic Development Council, 2001), 1-2.
2. *Converting Brownfields to Green Space*, 19.
3. Ibid.
4. <http://es.epa.gov/oeca/sep/whatis.html>
5. <http://www.fhwa.dot.gov/tcsp/>
6. U.S. Environmental Protection Agency, *Funding Brownfield Remediation with the Clean Water State Revolving Fund* (EPA 832-F-98-006 Washington, D.C.: U.S. Environmental Protection Agency, October 1998).

## Resources

- Bartsch, Charles. "Financing Brownfield Cleanup and Redevelopment." *Government Finance Review* (February 2002).
- Davis, Todd S. *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property*. 2<sup>nd</sup> ed. Chicago, Ill.: American Bar Association Section of Environment, Energy and Resources, 2002.
- International Economic Development Council. *Converting Brownfields to Green Space*. Washington, D.C.: International Economic Development Council, 2001.
- Rothermeyer, William. "The RCRA Brownfields Prevention Initiative—more flexibility for some sites." *Trends* (Chicago, Ill.: ABA Section of Environment, Energy and Resources) 33, no. 6 (July/August 2000).

Ryan, Dave. "EPA Administrator Whitman Announces \$14.6 Million in Grants to Help 80 Communities Revitalize Abandoned Properties." *Environmental News* (May 20, 2002).

———. "EPA Administrator Whitman Announced \$21.5 Million to Revitalize Blighted Communities in 17 States." *Environmental News* (May 3, 2002).

U.S. Environmental Protection Agency. "Brownfields Tax Incentive, Brownfields Economic Redevelopment Initiative," [www.epa.gov/brownfields/bftasinc.htm](http://www.epa.gov/brownfields/bftasinc.htm).

———. *Characteristics of Sustainable Brownfields Projects, Task 1 Report Sustainable Redevelopment Linking the Community and Business for a Brighter Future*. (EPA 500-R-98-001) Washington, D.C.: U.S. Environmental Protection Agency, July 1998.

———. *Funding Brownfield Remediation with the Clean Water State Revolving Fund*. (EPA 832-F-98-006) Washington, D.C.: U.S. Environmental Protection Agency, October 1998.

## **Web Sites of Interest**

U.S. Environmental Protection Agency Brownfields Program  
[www.epa.gov/brownfields](http://www.epa.gov/brownfields)

National Conference of State Legislatures, Growth Management and Land Use  
<http://www.ncsl.org/programs/esnr/land.htm>

National Conference of State Legislatures, Brownfields  
<http://www.ncsl.org/programs/esnr/bwnfield.htm>

National Governors' Association, Brownfield Redevelopment  
[http://www.nga.org/center/topics/1,1188,D\\_374,00.html](http://www.nga.org/center/topics/1,1188,D_374,00.html)

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