APPENDIX E

POLICY TOOLS ASSESSMENT

BROWNFIELD POLICY OPTIONS

APPENDIX E OF REGIONAL BROWNFIELD SCOPING PROJECT FINAL REPORT

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METRO

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ACRONYMS AND ABBREVIATIONS

CERCLA	Comprehensive Environmental Response, Compensation and Liabilities Act
DEQ	Department of Environmental Quality
EPA	Environmental Protection Agency
EZ	Enterprise Zone
GIS	Geographic Information Systems
MPAC	Metro's Policy Advisory Committee
MTAC	Metro's Technical Advisory Committee
OAR	Oregon Administrative Rule
ORS	Oregon Revised Statute
PDC	Portland Development Commission
PPA	Prospective Purchaser Agreement
SNAP	Small Nonprofit Accelerated Program Bond
TIF	Tax-Increment Financing
TRT	Technical Review Team
UGB	Urban Growth Boundary
URA	Urban Renewal Area

1 INTRODUCTION

The Regional Brownfield Scoping Project is a first attempt to grasp the scale and impact of brownfields at the regional level and to present policy options that help address the various aspects of the issue. This report contributes to the Regional Brownfield Scoping Project by assessing a potential policy tools to promote cleanup and redevelopment of contaminated properties.

There are a number of potential policy tools that could be adopted to address the challenges of brownfield cleanup and redevelopment. The Portland metro region can look to policies that have proven effective for other states and local governments, can look for ways to improve existing policies and programs, and can revisit and refine recommendations from previous brownfield initiatives in the Portland area. This report section presents a set of potential policy tools based on review of best practices nationwide, meetings of the Technical Review Team, input from local brownfield experts, and previous planning studies.

These policies are presented for discussion purposes and will be reviewed and prioritized by the project's Technical Review Team and Metro Council, Metro's Technical Advisory Committee, and Metro's Policy Advisory Committee.

2 BROWNFIELD POLICY OPTIONS

The solutions are organized in categories to align with the challenges described in the Regional Brownfield Scoping Project Final Report:

- Financial Capacity (F1-F13)
- Managing Risk (M1-M3)
- Linking Cleanup and Redevelopment (L1-L5)
- Regulatory Process (R1-R4)

It is important to note, that there is likely no silver bullet: no single policy tool will resolve the complex brownfield issues facing the region. Rather these tools can be prioritized and packaged to provide a coordinated set of policies that are mutually supportive, targeted to specific types of brownfields, and designed to resolve the problems in the current regulatory and incentive framework.

The discussion of policy options is crafted to provide a brief overview and summary analysis of the tools including the following elements:

Challenge—Describes what brownfield challenges the tool addresses

Solution—Briefly describes the policy tool

Mechanics—Outlines how the tool works and how it can be implemented in the Portland metro region

Considerations—Outlines key issues or concerns to address in implementing the tool

Implementation Actions – Key next steps in developing the policy

Lead and Support – Identifies which agencies could take a lead or supporting role in implementing or managing the proposed policy solution

Typologies Targeted—Indicates which brownfield typologies will most likely benefit from the tool

The tools are summarized in the following table and are individually described in the following narrative.

Metro Brownfield Policy Tools Matrix

Tool	Description	Typology				Level of Gov.	States Where Adopted
		Small Commercial	Industrial Conversion	On-Going Industrial	Rural Industrial		
FINANCIAL/CAPACITY							
F1. Target Policies to Priority Areas	Use existing policies and objectives to leverage the cleanup of specific properties. Conduct outreach to property owners of sites which impact multiple public programs. (i.e. Metro-designated town centers, urban renewal areas, enterprise zones)					Metro and Local	N/A
F2. Tax Credit for Remediation	Consider expanding the use of tax incentives, such as income tax credits for dollars spent on site investigation and environmental cleanup.					State	13 States, MA is a model
F3. Integrated Planning & Site Assessment Grants	Establish a publically funded Brownfield Integrated Planning Grant to conduct environmental assessments and support site-specific redevelopment strategies.					State, Metro, or Local	WA, NJ, NY
F4. Community Investment Initiative	Building on models being explored in Metro's Community Investment Initiative, create a new entity to combine public and private funds and foster unique joint venture opportunities.					Metro and Local	N/A
F5. Public Equity in Sites	Make it easier for public development organizations to provide gap financing for projects in exchange for securing an equity interest in the property.					State , Metro, or Local	
F6. Property Tax Abatement	Modify tax abatements associated with Enterprise Zones and urban infill programs to extend the duration of tax abatements in any area and make brownfield remediation for industrial development more viable.					State Policy Change; Local Implementation	Multiple states incl. NJ, IL, AI, TX
F7. Reform Contaminated Property Tax Assessment	Modify tax assessment valuation rules to include time restrictions on the value reduction associated with a cleanup liability to discourage moth-balling					State	N/A
F8. TIF Reforms	Modify policy to make TIF a more effective tool for promoting brownfield cleanup and redevelopment. Use policy mechanisms to create better tie-ins between tax increment financing and brownfield projects to incentivize redevelopment.					State Policy Change; Local Implementation State	Models: WI, MI, PA, KY
F9. Pooled Bonding	Allow localities to use bond proceeds to purchase a pool of general obligation bonds to fund cleanup projects (i.e. SNAP program).					State Policy Change; Local Implementation	

Note:
Green Icon—Strong potential benefit for typology
Gray Icon—Modest potential benefit for typology

Metro Brownfield Policy Tools Matrix

Tool	Description	Typology				Level of Gov.	States Where Adopted
		Small Commercial	Industrial Conversion	On-Going Industrial	Rural Industrial		
F10. Job Credits	Provide a tax credit to new businesses based on the number of new jobs created by a completed development.					State	Multiple, models, FL
F11. Historical Insurance Support	Provide technical support to assist work parties in making claims on historical insurance policies.					State, Metro, or Local	IN
F12. Dedicated State Cleanup Fund	Establish a dedicated fund for cleanup and redevelopment of brownfields. The revenues or the fund should be generated from a source that has both a nexus with contamination and the potential to generate a substantial revenue stream.					State	NY, MI, MN, WA
MANAGING RISK							
M1. Pooled Environmental Insurance	Establish a program that would decrease the transaction costs and reduce the cost of purchasing environmental insurance to covers risk.					State or Local	WI, MA
M2. Model Purchase and Sale Agreement	Create a model agreement with indemnification language and distinctions between upland and in-water liabilities along with standard transfer issues such as due diligence period, timing of cleanup, warranties, and inspection period.					State or Local	
M3. Public Land Bank	Establish a land bank to acquire contaminated properties, manage and finance cleanup and redevelopment, and sell property back into the private market.					State Legislation; implemented at State or Local level	MI, MN

Note:
Green Icon—Strong potential benefit for typology
Gray Icon—Modest potential benefit for typology

Metro Brownfield Policy Tools Matrix

Tool	Description	Typology				Level of Gov.	States Where Adopted
		Small Commercial	Industrial Conversion	On-Going Industrial	Rural Industrial		
LINKING CLEANUP AND REDEVELOPMENT							
L1. Use by Right/ Regulatory Flexibility	Local governments could apply a zoning code overlay to contaminated sites or create a brownfield inventory list for priority sites that would allow developers and property owners to develop the site with greater regulatory flexibility.					Local	
L2. Brownfield Guidebook	Provide more effective resources to educate land owners and prospective buyers about the cleanup and redevelopment process and the resources available to assist these projects.					State or Local	Multiple Models: WA, CO, WV
L3. Build Market Demand	Develop programs to link more risk tolerant investors and developers with brownfield properties.					State or Local	NJ, PA
L4. Universal Database	Create an open system to share environmental information across projects. This system could include analytical data on groundwater flow, contaminant concentrations, along with beneficial use determinations.					State or Local	WA
L5. One Stop Shop	Create a system for inter-agency coordination for permitting and funding brownfield projects.					State and Local	PA
REGULATORY PROCESS							
R1. Formalize Presumptive Remedies and Standards	Establish guideline documents for simple cleanup sites with common redevelopment uses.					State	Multiple
R2. Licensed Site Remediation Professional	Give licensed professionals authority to certify cleanups, decreasing the role of the state and the administrative process on every site.						
R3. CERCLA Prospective Purchaser Agreements	EPA provide Prospective Purchaser Agreements, jointly with Oregon DEQ to provide certainty and liability protection to innocent purchasers of contaminated properties under federal Superfund Law.					Federal	N/A
R4. CERCLA De Minimis Settlements	EPA provide expedited settlement agreements for owners of properties that likely cause minor impacts to the Harbor.					Federal	N/A

Note:
Green Icon—Strong potential benefit for typology
Gray Icon—Modest potential benefit for typology

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

F1. Target Policies to Priority Areas

Challenge—The successful cleanup and redevelopment of a brownfield is driven by a number of factors beyond the cost of cleanup, such as market potential, timing, location, and amenities. Redevelopment typically occurs on an ad hoc basis, driven as much by opportunity and happenstance as by a coordinated and concerted effort.

Solution—Metro implements a number of policies and programs to promote infill development, such as the Transit Oriented Development program. As an overarching policy, brownfield properties that also meet the objectives of these other programs can be targeted with a coordinated package that leverages multiple funding sources to stimulate catalyst projects.

Mechanics—This policy tool can be implemented by funding agencies through minor changes to internal guidelines. Using the inventory of historical property uses, identify potential brownfield properties located in areas of prioritized public investment. Coordinate between Metro departments to create a strategic approach to conduct outreach and work with property owners to support cleanup and redevelopment of those targeted brownfields.

Considerations

- Creating criteria to prioritize financial incentives to properties in targeted areas while maintaining equitable distribution of resources
- Establishing management and coordination structure with minimal administrative demands

Implementation Actions

- Identify the suite of Metro programs and policies that align with brownfields redevelopment
- Map geographic areas of focus for Metro's land use and economic development programs
- Identify brownfield properties within those targeted areas
- Focus brownfield recycling program resources in those targeted areas

Lead and Support

Metro and Local Governments

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

F2. Tax Credit for Remediation

Challenge—There is limited public financial support for cleanup and redevelopment of brownfields.

Solution—Provide an income tax credit for costs of conducting site investigation and environmental cleanup. Income tax credits have become a popular brownfield incentive in states across the country. The reasons are that, in comparison to grant and loan programs:

- A tax credit program is a more predictable source of funding—it can be counted on in the initial consideration of project feasibility
- Tax credit programs offer a substantial inducement for private investment; whereas grant programs are often limited to public and non-profit developers
- A tax credit is not subject to annual appropriations and is therefore more likely to be maintained even when other programs are being cut

Mechanics—Establishing a brownfields income tax credit would involve a statewide statutory change. The mechanics of how tax credit programs operate in other states vary among the 13 states that have adopted this type of policy.[1] The major policy points include:

- Cap on the overall total financial capacity of the program
- Limits to credit available for an individual project
- Transferability of the tax credit
- Eligible costs (limited to cleanup or inclusive of site preparation or other redevelopment expenses)
- Needs testing
- Links to certain public benefits, such as job creation or investment in distressed areas.

Generally, the programs that offer the possibility of greater subsidy of redevelopment costs (not just cleanup) also have more needs testing and overall program caps, and, consequently, the tax credit is far from automatic. New York, Connecticut, Iowa, and Missouri are in this category.

[1] Redevelopment Economics, Chart of State Brownfields Tax Credits, see http://www.redevelopmenteconomics.com/yahoo_site_admin/assets/docs/State_Tax_Credits_chart_7-11.208190334.pdf

At the other end of the spectrum are state programs that are fully automatic but are limited by per project ceilings (Mississippi, Colorado, Illinois, Florida, and Kentucky), and are therefore unable to offer a substantial inducement for larger more complex cleanups.

Several states (Wisconsin, New York, and New Jersey) do not make their credits transferable, which means that non-profits cannot benefit, and many developers with limited tax liability cannot take advantage of the incentive.

Massachusetts is the only state that offers a brownfields tax credit with the combination of being: 1) fully automatic; 2) fully transferable; and 3) not subject to per project ceilings. The Massachusetts program is also a model in that unrestricted use cleanups are rewarded (a 50 percent credit for unrestricted-use cleanups versus a 25 percent credit for restricted use cleanups). The program is also restricted geographically to Massachusetts designated Economically Distressed Areas.[2]

A draft report on the impact of the Massachusetts Brownfields Tax Credit) prepared by Redevelopment Economics outlines the impacts of 44 completed projects (representing between 50 and 65 percent of all tax credit projects):

- $54 million in tax credits have helped leverage $2 billion in brownfields investments. All tax credit investments are in state-designated Economically Distressed Areas (a statutory requirement) so all investments assist struggling communities and neighborhoods.

- The state's investment in tax credits is repaid six times over in only ten years of operation. That is, state tax revenues derived from initial construction and from ten years of the on-going impacts of businesses locating at brownfield tax credit sites exceed the initial public investment (taxes waived) by a factor of more than six to one.[3]

The other tax credit program which has well documented benefits is the Missouri Remediation Tax Credit Program. An analysis of 50 sites that had received the tax credits found that those projects represented $2.2 billion in investments and created over 11,000 jobs.

Considerations—State government fiscal constraints are likely to make any new tax incentive difficult to implement. There are two potential responses to fiscal concerns.

- Conduct fiscal analysis that would forecast the costs versus benefits of a brownfields tax credit.

[2] See: http://www.mass.gov/dep/cleanup/bfhdout2.htm

[3] This calculation counts only direct impacts (not multiplier-derived impacts) and does not count the retail businesses attracted to BTC sites.

- Structure the credit so that only projects that produce net positive fiscal benefits to the state are eligible. Missouri does this through an application process that includes an independent impact analysis. New Jersey accomplishes the same objective by not granting the credit until a post-development accounting demonstrates positive fiscal benefit to the state.

Implementation Actions

- Conduct financial analysis of potential tax credit including impacts on state budget and forecasted benefits from promoting brownfield redevelopment

- Decide on key elements of tax credit structure, such as eligibility and limits. This work could be conducted as a follow up to the Regional Brownfield Scoping project with the current Technical Review Team or through another forum.

- Draft proposed legislation and review with appropriate state agencies and legislative committees

Lead and Support

State of Oregon would need to implement legislative change.

Local governments and interested stakeholders could play a key role in advocating for the legislation and defining how this policy should be shaped.

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

F3. Integrated Planning & Site Assessment Grants

Challenge—Local governments often lack resources to perform adequate due diligence and planning to acquire or redevelop brownfields in their communities. Existing site assessment grant programs help to address this need, but only support environmental investigation. This can create the situation where an owner learns that their property has an expensive environmental liability, but has no strategy to offset that cost.

Solution—The State or local governments could establish a publically-funded Brownfield Integrated Planning and Site Assessment Grant. The grant would be used to conduct environmental site assessments to understand cleanup needs, and also fund studies to support a site-specific redevelopment strategy. These planning studies could include: market assessment, architectural and engineering analysis of existing buildings, land use analysis, infrastructure assessment, geotechnical assessment, site planning, and property appraisal. These studies would be integrated with the environmental assessment to develop plans that create a viable redevelopment vision and strategy for a property. As the financial analysis of brownfields conducted as part of the Regional Brownfield Scoping Project has shown, these market and site development factors are often as significant as the contamination issues in achieving financial feasibility for redevelopment.

Mechanics—The grant program could be managed by existing brownfield programs such as Metro's Brownfield Recycling Program or Business Oregon. Grants would be awarded on a competitive application basis that

Policy Tool Examples

Washington State—The State of Washington has created an Integrated Planning Grant program as a pilot initiative that provides up to $200,000, with no match requirement, to local governments to conduct due diligence and create a strategy for cleanup and redevelopment of contaminated sites before investing local funds. In the first three years since the program was initiated approximately thirteen communities have received or applied for the grants. These projects have focused both on properties currently owned by local governments and on vacant lands being considered for public acquisition to promote redevelopment.

Adair Village, Oregon—With a grant from Business Oregon, the City of Adair Village has embarked on a pilot project to create a redevelopment plan for a former mill site that integrates cleanup and adaptive re-use of the property. The plan incorporates market analysis, community involvement, land use planning, and strategy for risk management and funding. Without the leadership of the City of Adair Village, the contaminated site would have likely remained in a blighted condition for years to come.

could incorporate criteria to ensure the projects align with multiple Metro policy goals (as described in tool F1).

Considerations

- Funding source for the grant program
- Minimizing grant match requirements to reduce the barrier to entry
- Strategically focus grants on smaller sites, well-located sites with existing infrastructure, or sites with minimal environmental issues to have the most impact
- Do not require local governments to currently own the property
- Whether to allow potentially liable party to be eligible for grant funds

Implementation Actions

- Identify funding source such as EPA Assessment grants and Business Oregon revolving loan fund sub-grants, or Dedicated Brownfield Cleanup Fund (See Policy Tool F12.)
- Determine most appropriate agency to manage the grant program
- Establish grant program guidelines including applicant eligibility, allowed costs, and grant evaluation criteria
- Develop a legislative proposal to establish funding program

Lead and Support

State or Oregon (DEQ or Business Oregon) or Metro

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

F4. Community Investment Initiative

Challenge—The metro region has an estimated $27 to $40 billion infrastructure hurdle over the next two to three decades, and the area is lacking in sufficient industrial lands to accommodate future growth[4]. Brownfields are recognized as having a special set of infrastructure-related challenges, and remediating them could create a huge return on property tax revenues, job creation and other benefits. Overcoming this challenge will take a new mix of public and private resources to more effectively see the redevelopment of these compromised sites.

Solution— Create a public-private funding partnership entity that invests in infrastructure and brownfield remediation to provide viable returns to each participating sector. This concept has been proposed by the Community Investment Initiative, a group of public and private sector leaders seeking mechanisms to overcome infrastructure challenges, including those related to brownfield remediation.

Mechanics—The public-private partnership for infrastructure funding concept is still under development by the Community Investment Initiative. The details of how the concept could be implemented, including how the funding entity would be structured and how projects would be prioritized have not yet been determined.

Considerations

- Creating a viable public-private entity will require restructuring resources and creatively packaging funds to meet project needs, as well as securing commitments from various private sector institutions/businesses to allocate funds for infrastructure
- While ranking high among infrastructure needs, brownfields would have to compete for funds, and decision making criteria have yet to be established
- Coordination with state infrastructure funding programs in addition to local government and private sector contribution

Implementation Actions

- Continued work of the Community Investment Initiative, including further analysis of structural and operational issues to set up a regional infrastructure entity
- Establish criteria for prioritizing projects for funding

[4] Metro. 2008. Regional Infrastructure Analysis.
http://library.oregonmetro.gov/files/regionalinfrastructureanalysis.pdf

Lead and Support

Community Investment Initiative, Metro, and Local Governments

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

F5. Public Equity in Brownfield Sites

Challenge—Brownfield sites are often financially upside down and developers often don't have patient capital. Public subsidy of brownfields is typically through financial grants or low interest loans that provide only limited direct return on investment. The public return on investment typically comes through increased tax revenues generated through redevelopment

Solution—Government entity takes an equity interest in the property to offset its remediation investment and recognizes the ongoing potential

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FINANCIAL/CAPACITY							
F1. Target Policies to Priority Areas	Use existing policies and objectives to leverage the cleanup of specific properties. Conduct outreach to property owners of sites which impact multiple public programs. (i.e. Metro-designated town centers, urban renewal areas, enterprise zones)					Metro and Local	N/A
F2. Tax Credit for Remediation	Consider expanding the use of tax incentives, such as income tax credits for dollars spent on site investigation and environmental cleanup.					State	13 States, MA is a model
F3. Integrated Planning & Site Assessment Grants	Establish a publically funded Brownfield Integrated Planning Grant to conduct environmental assessments and support site-specific redevelopment strategies.					State, Metro, or Local	WA, NJ, NY
F4. Community Investment Initiative	Building on models being explored in Metro's Community Investment Initiative, create a new entity to combine public and private funds and foster unique joint venture opportunities.					Metro and Local	N/A
F5. Public Equity in Sites	Make it easier for public development organizations to provide gap financing for projects in exchange for securing an equity interest in the property.					State, Metro, or Local	
F6. Property Tax Abatement	Modify tax abatements associated with Enterprise Zones and urban infill programs to extend the duration of tax abatements in any area and make brownfield remediation for industrial development more viable.					State Policy Change; Local Implementation	Multiple states incl. NJ, IL, AL, TX
F7. Reform Contaminated Property Tax Assessment	Modify tax assessment valuation rules to include time restrictions on the value reduction associated with a cleanup liability to discourage moth-balling					State	N/A
F8. TIF Reforms	Modify policy to make TIF a more effective tool for promoting brownfield cleanup and redevelopment. Use policy mechanisms to create better tie-ins between tax increment financing and brownfield projects to incentivize redevelopment.					State Policy Change; Local Implementation State	Models: WI, MI, PA, KY
F9. Pooled Bonding	Allow localities to use bond proceeds to purchase a pool of general obligation bonds to fund cleanup projects (i.e. SNAP program).					State Policy Change; Local Implementation	

Note:
Green Icon—Strong potential benefit for typology
Gray Icon—Modest potential benefit for typology

(1 of 3)

revenue stream or the marginal increase of property value in the event of a sale. This scenario is in line with the orientation of the region's Community Investment Initiative.

Mechanics—Make it easier for public development organizations like the Portland Development Commission or a regional infrastructure entity such as that being proposed by the Community Investment Initiative, to provide gap financing for projects in exchange for securing an equity interest in the property. The advantage to the developer is that it lowers net investment in the property, so decreases front end investment. The advantage to the public entity is greater return on the capital invested in the project. The public entity could create a revolving equity fund through its investment.

Considerations

- Encumbrances of public dollars in private projects (such as prevailing wage requirements, additional review processes, and public record requirements) which may deter private investors
- Extended return time on public investment
- Financial disclosure of private parties (a potential deterrent)
- Public perception concerns about inappropriate use of public funds or "handouts" to developers
- Likely to focus on larger project, not Type 1 Small Commercial sites

Implementation Actions

- Conduct further analysis of the potential implication of this policy
- Legal review of constraints on lending public credit to private parties

Lead and Support

Metro and Local Governments

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

F6. Property Tax Abatement

Challenge—Current tax abatement programs are limited and not adequate to overcome the financial challenges of many brownfield properties.

Solution—Utilize some of the key criteria existing for enterprise zone tax abatement and apply these to brownfields throughout the state. Seek enabling legislation to secure a tax abatement term for up to 15 years for brownfields that can be placed back into industrial uses. The length of the tax abatement will be based on criteria that have yet to be identified (e.g., amount of investment, job creation and/or retention, etc.).

Mechanics—Changes to the current tax abatement policy would require state legislative action. The state and many local jurisdictions offer property tax abatement to stimulate certain types of redevelopment and economic development. Oregon offers the Enterprise Zone as one mechanism that abates property taxes on economic development improvements within designated areas of a community. Abatements last for 3 to 5 years in urban areas and up to 15 years in rural areas.

As a further inducement to redevelop brownfields, the tax abatement could be offered for a period of 3 to 5 years for any property meeting the definition of a brownfield, regardless of its location inside or outside an Enterprise Zone. The duration of the abatement could be extended for industrial projects if that is a state-wide or regional priority.

Considerations

- Assessment of costs and benefits to public and private sector from the proposed policy change, such as job creation and tax revenue impacts from returning fallow land into productive uses, and property tax losses for the abatement period
- Administrative guidelines for the program, such as eligible projects, duration of the abatement, and penalties for failure to perform
- Flexibility of tax abatement program to meet needs of various types of sites and coordination with other assistance programs

Implementation Actions

- Explore potential options for structuring the abatement program
- Conduct cost/benefit analysis of expanded abatement program based on several models for key elements such as project eligibility, abatement period, and types of redevelopment
- Draft legislative proposal

Lead and Support

State or Oregon, Metro and Local Governments

F7. Reform Contaminated Property Tax Assessment

FINANCIAL

Typologies Targeted

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

Challenge—Currently, owners of contaminated sites are able to secure significant reductions in their property taxes based on the impact contamination has on a site's value for development purposes. These deep reductions in taxes can last a long time and a site may not be remediated for decades. This situation not only adds to the burdens of local governments and schools by diminishing their financial resources and consequently their services, but also tends to hamper development potential for nearby properties. Tax reductions in their current form provide a disincentive for cleanup and redevelopment.

Solution—Revise the current property tax assessment criteria for contaminated sites by setting time limits for the value reduction whereby lack of remedial action by the property owner results in diminishing tax reductions over time. An additional, or alternative, solution would require that the value of the tax reduction be dedicated to covering the costs of the property cleanup.

Mechanics—The administrative rule establishing procedures for assessing property taxes includes a methodology for valuing contaminated properties (OAR 150-308.205-(E)). This methodology currently discounts the assessed value of contaminated properties based on the estimated cleanup cost, redevelopment constraints, and financing implications. The administrative rule could be amended so that this discount diminishes over time.

Considerations

- Review legal implications of changing this policy.
- Potential financial impacts on existing businesses that currently take advantage of the existing valuation reduction
- Establishing a reasonable period for the discount that is long enough to be realistic for property owners to conduct remedial actions, but short enough to discourage mothballing of property
- Explore how this program can be bundled with other assistance programs that enable property owners to access funds and/or reduce ongoing liability for clean up
- Potentially apply time limit on value reduction only to vacant properties (to avoid impacts to active business operations)
- Engaging private sector owners and/or businesses to incorporate their perspective and gain support for this reform

Implementation Actions

- Obtain data from county tax assessors or other sources to more accurately quantify the scale of impact of the current property value assessment policy

- Conduct further analysis of the impact of the current policy on the remediation and redevelopment status of properties and fiscal impact on tax revenues

- Coordinate with Oregon Department of Revenue and the private sector on structuring key elements of contaminated property assessed value methodology, including time limits.

- Conduct administrative rule update process.

Lead and Support

State of Oregon lead on administrative rule update process. Research and support conducted by State, Metro, and/or Local Governments.

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

F8. Tax Increment Financing Reforms

Challenge—Limited public funds are available to support cleanup and redevelopment of brownfields. Tax Increment Financing (TIF) has been an important financial tool to support a number of brownfield projects in the Portland metro region. There is potential for TIF to be refined to be a more effective tool for promoting brownfield cleanup and redevelopment

Solution—Modifications to the existing TIF policy that could provide greater support to brownfields include

- Making brownfields outside of urban renewal areas eligible
- Exempt brownfield projects from land and tax base TIF limits
- Use TIF to support credit enhanced borrowing
- Augment local TIF revenues with state funds
- Use TIF to support an environmental insurance pool

Mechanics—Most of the potential modifications to TIF would require legislative changes or revising criteria for property tax evaluations. However, some proposals might be advanced through administrative mechanisms. Several specific potential modifications for using TIF for brownfields redevelopment in Oregon are presented below.

Urban Renewal Plan Exception. The urban renewal-related requirements dictate that TIF is used only for area redevelopment, not for the redevelopment of isolated or small individual/brownfield sites. Some states, such as Wisconsin, make an exception so that brownfields sites can use TIF without the urban renewal plan requirement. In Oregon a statutory change would be required to create a similar exception, but the result would mean that numerous brownfield sites could potentially make use of TIF. More subtle, limited changes to support isolated or small sites could include: 1) limiting brownfield TIF to sites that have been vacant for a certain time period; and/or, 2) limiting brownfield TIF expenditures to cleanup and site preparation, not infrastructure or vertical development.

Land / Tax Base Limitation. The limitation that localities may not designate TIF districts for more than 15 percent of their land or 15 percent of their assessable base in TIF districts may hamper TIF redevelopment, particularly in Portland. Several states have made exceptions to debt limitations for brownfield TIF projects. For example, sites eligible for Wisconsin's Environmental Remediation TIF program are not subject to the general requirement that TIF districts not exceed 15 percent of the equalized value. Alternative Borrowing Sources to Assist with Upfront Costs. Private bond market TIFs normally assist vertical development because that is the point

where potential investors see a predictable revenue stream. Brownfield sites, however, usually need extensive upfront investment so alternative or "credit enhanced" borrowing would help make the brownfields-TIF connection work. The City of Portland already has in place an alternative TIF borrowing source—the Direct TIF Loan Program.[5] Other options from other states include:

- Pennsylvania TIF Loan Guarantee Program, which backs local TIF projects that meet certain state objectives, up to $5 million per project

- Michigan's Brownfields Redevelopment Loans (for cleanup) and Revitalization Revolving Loans (for demolition and site preparation) are designed to work with TIFs. They feature flexible repayment terms, such as no payments due for the first five years and two percent interest rates.

- Connecticut's Brownfields Redevelopment Authority, which provides both an alternative borrowing source, and a state guarantee.

State Revenues Dedicated to Assist Projects that Meet State Objectives. Oregon does not currently dedicate state revenues to supplement local TIFs. Sometimes dubbed "super TIFs," the pledge of state revenues can make a very significant difference in gap financing, and the logic of the state committing funds to support projects that meet state objectives is indisputable. One of the best examples is Kentucky's support for "Signature Projects," defined as mixed use redevelopment projects that involve a minimum $200 million private investment and can be demonstrated to create net positive economic and fiscal impacts for the State.

TIF and Environmental Insurance. Consideration should be given to developing a proposal to use TIF to subsidize environmental insurance premiums. See discussion in the Pooled Environmental Insurance section (M1).

Considerations

- Examine the potential to make proposed modifications in a way that has limited fiscal impact

- There are considerable political hurdles and widespread misgivings about the use of TIF. Opening the legislative discussion on TIF allows for the potential for additional and/or alternative impacts to the TIF program.

[5] See: http://www.pdc.us/bus_serv/finance-pgms-detail/direct-tif.asp

Implementation Actions

- Refine proposed TIF modifications through the Technical Review Team and discussion with other stakeholders
- Conduct financial analysis of the costs and benefits of proposed TIF modifications
- Draft proposed legislative amendments

Lead and Support

State of Oregon lead on legislative process. Research and support conducted by State, Metro, and/or Local Governments.

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

F9. Pooled Bonding

Challenge—Issuing bonds is an important tool for funding infrastructure and development projects. Brownfield sites that lend themselves to redevelopment can significantly increase the return on investment for private parties (e.g., commercial conversion of former industrial sites), and can successfully access bonding as a funding source. While others, such as industrial to industrial redevelopment projects, and many smaller brownfield sites owned by entities with lesser resources, cannot.

Solution—Small brownfield sites owned by entities with limited resources and larger sites that have expensive remediation may find assistance through pooled tax-exempt revenue bonds. It may be possible to issue revenue backed tax-exempt bonds for remediation of a number of challenged sites if these can be bundled in a manner that provides a viable revenue stream to repay the bonds. This may result in variable rates of participation in the repayment schedule by different site owners.

Mechanics—State and local jurisdictions have the ability to issue tax-exempt (as well as taxable) revenue backed bonds for a variety of purposes. These bonds do need to be repaid in some form by the projects to which they are applied. The state, through the Oregon Facilities Authority (OFA), currently pools bonds (SNAP bonds) for smaller scale non-profit entities. This program can be a useful model for a brownfield focused bond pool.

The pooled bonding effort would need several elements to be successful:

- Local area with multiple brownfield sites
- Strong case that it is in the public interest to remediate the sites
- Viable bond repayment revenue stream

Considerations

- Potential for the Community Investment Initiative public-private partnership entity to lead, if it's formed
- Avoid general obligation bonding that holds the local jurisdiction or state liable
- Potential revenue streams from the bundled projects to service debt (it could come through a variety of sources, e.g., land lease payments, sale and/or refinance proceeds, rental payments from end users, increased tax payments, etc.)
- Limitations on lending of public credit to private parties

Implementation Actions

- Explore with the state and willing local jurisdictions, interest in running a demonstration effort for pooled brownfield remediation bonding.

Lead and Support

Metro, and/or Local Governments.

F10. Jobs Tax Credit

FINANCIAL

Typologies Targeted

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

Challenge— Redevelopment of brownfield properties requires substantial upfront investment to assess the nature and extent of contamination, develop a cleanup plan, and conduct the remedial actions. This financial challenge often leads to properties lying abandoned or underutilized for years.

Solution—Provide a tax credit to developers based on the number of jobs provided by a completed development.

Mechanics—This policy would require state legislation for implementation. In 2011, Oregon legislators considered a bill that would provide job tax credits for completed projects[6]. If the legislation had been approved, participants in the DEQ Voluntary Cleanup Program (VCP) would receive a $1,000 credit per job for a taxpayer who creates 25 or more jobs during a removal or remedial action.

Similar suggested legislation has proposed that participants of the VCP receive a $5,000 tax refund for each new job created that exceeded average annual county wage and a $2,500 tax refund for each new job that didn't. The incentive would only apply for full-time jobs created in Oregon.

The job credit would be approved following the verification of jobs and awarded as a refund paid out of taxes paid by entities to the State, including corporate taxes. Refunds would be distributed annually with no more than 25% of the approved total bonus refund to be paid in a single fiscal year. DEQ would be responsible for certifying eligible tax payers for the credit prior to redevelopment.

This proposal is similar to jobs tax credits that have proven to be effective in other states. Florida, for example provides a $2,500 tax refund for each new job created in a designated brownfield redevelopment area.

Considerations

- Any tax credit measure will need to consider the financial impact to the state as a primary concern
- Limiting applicability of jobs tax credits to designated areas, such as Urban Renewal Areas or economically distressed areas

Implementation Actions

- Conduct analysis of costs and benefits of the jobs tax credit proposal, incorporating several options for the magnitude of the tax credit and criteria for project eligibility

[6] House Bill 2949, 76th Oregon Legislative Assembly, 2011 Regular Session

- Prepare legislative proposal

Lead and Support

State of Oregon lead legislative process. Research and support conducted by State, Metro, Local Governments, and interested stakeholders.

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

F11. Historical Insurance Recovery Support

Challenge—Site investigation and cleanup costs can be expensive. Historical insurance policies provide a potentially significant source of funding to support these efforts, but they can be challenging to access.

Solution—Provide technical support to assist parties in making claims on historical insurance policies.

Mechanics—In the past, Oregon DEQ provided technical support to guide parties through the process of submitting a claim on historical insurance policies. The state or Metro could fund staff to provide this service again.

Before the mid-1980s, commercial general liability policies did not contain exclusions for liabilities caused by environmental damage. Therefore, cost recovery may be pursued from historical insurance policies that were in place when pollution occurred and that covered the property owner, operators, or other potentially liable parties. Historical insurance recovery requires a commitment of time and resources, but is becoming a standard industry practice. Oregon state law and court decision precedents make it one of the most favorable states in the nation for substantiating environmental claims on historical insurance policies.

Making a claim on an historic insurance policy requires substantiating information of a liability and proof of coverage during the period of the environmental contamination. It is typically recommended to work with an attorney to make an historical insurance claim, but there also can be a large amount of document research needed to provide proof of coverage

Considerations

- Funding for staff (could be a fee for service payable upon settlement with the insurance carrier)
- Potential opposition from insurance carriers

Implementation Actions

- Determine appropriate agency to manage the program and staff
- Decide on appropriate funding mechanism
- Seek approval for program and staff

Lead and Support

State, Metro, or Local Government could each lead.

FINANCIAL

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

F12. Dedicated State Cleanup Fund

Challenge—Oregon State grant and loan programs for brownfields are limited in their financial capacity. These programs are either capitalized by federal grants or appropriated through the state general fund. Tipping fees at waste disposal facilities do provide a dedicated source of revenue for environmental programs, but they are limited.

Solution—Oregon or the Portland region could establish a dedicated fund for cleanup and redevelopment of brownfield properties. The revenues for the fund should be generated from a source that has both a nexus with contamination and the potential to generate a substantial revenue stream.

Mechanics—Several other states, like Michigan and New York, have passed large bond measures to support environmental cleanup. The federal government and some states have implemented taxes or fees dedicated to environmental cleanup. The federal CERCLA originally included the Superfund Tax on hazardous materials to support cleanup of priority sites. The Superfund Tax applied to certain chemical and pesticides, but notably excluded petroleum. The Superfund Tax expired in 1996 and has not been reinstated. Washington State's cleanup law that was passed by voter initiative included a fee on the wholesale value of hazardous substances, including petroleum, at a rate of $7 per $1,000 of wholesale value. The funds are used to support hazardous waste cleanup and prevention activities. The hazardous substance tax has generated over $100 million per year in revenues in the last five years. This high level of funding has been driven almost entirely by the high price of oil.

The Twin Cities of Minneapolis-St. Paul demonstrate how a local government can establish a cleanup fund. Ramsey County has been authorized by the state to collect a mortgage registry and deed tax to establish a fund to provide gap financing for brownfield. The use of the fund is very flexible and can cover remediation, site improvements, and indemnification associated costs. The Twin Cities Metropolitan Council also manages a cleanup loan and grant fund that is funded through a property tax levy.

The Oregon constitution includes a provision that prohibits the use of a fuel tax for any purpose other than transportation, so this particular model would have limited effectiveness in the state. There may be other products, such as the proposed transshipment of coal through Oregon ports, that could be used as a tax revenue stream to support brownfield cleanup and redevelopment. The Minneapolis-St. Paul approach may provide a model of a tax revenue stream that could support brownfield cleanup and redevelopment. The large bond model may also be applicable for Oregon.

Considerations

- Establishing eligibility requirements for funds
- Equitable distribution of funds
- An oil tax is not a sustainable source of funds

Implementation Actions

- Identification of potential products or services to generate tax revenue stream
- Prepare legislative proposal

Lead and Support

State of Oregon lead with support from Metro, and/or Local Governments.

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MANAGING RISK

Targeted Typologies

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

M1. Pooled Environmental Insurance

Challenge—A high level of risk and uncertainty is inherent in cleanup of contaminated properties, based on a number of factors, including:

- Cost of cleanup
- Potential discovery of unknown contaminants
- Claims by other potentially liable parties
- Third-party injury claims
- Regulatory changes in the future that may alter cleanup standards and reopen a completed cleanup

Solution—The State of Oregon, Metro or the City of Portland could establish a program that would decrease the transaction costs and reduce the cost of purchasing environmental insurance that covers these risks.

Mechanics—Environmental insurance is a tool for transferring the financial responsibility for certain risks or costs that may be present in contaminated property transactions. There are a number of environmental insurance products on the market. The two most prevalent are pollution legal liability and cleanup cost cap insurance.

Pollution legal liability insurance typically protects the insured against pollution-related losses associated with previously unknown conditions, including cleanup costs and third-party property damage or bodily injury claims. These policies can also cover regulatory re-openers, reduction of property value, and business interruption losses. These policies are highly flexible and provide a financial backstop that can facilitate loan approvals and capital investment.

Cost cap policies are designed to pay for unanticipated remediation project costs that exceed original project estimates. These policies are typically most cost effective for cleanups that cost over $10 million. Currently these policies are difficult to obtain on the market, however they are a powerful tool for managing one of the largest financial risks related to brownfield projects.

There are several options for a public role to facilitate the use of environmental insurance that could be effective for addressing brownfield challenges in the Metro area. These include:

Pre-Selected Insurers—To reduce the transaction costs of environmental insurance and make it more accessible for smaller sites, the state or Metro could pre-select brokers or insurance carriers. This type of program could offer cost cap insurance, pollution legal liability insurance, or blended risk

policies. The insurers would establish standard guidelines and template policies to make the process of drafting and executing a policy more efficient. For the privilege of having business directed to the insurers, they could agree to a discounted premium cost (the states of Wisconsin, California, and Ohio programs both provide 10% discounts).

Another approach to reducing the premium costs is for the state or Metro to subsidize the insurance premiums. For example, Massachusetts covers 50 percent of the premium costs of eligible projects (with a $50,000 limit for private projects and $150,000 limit for publicly sponsored projects).[7] The California program is also authorized with a 50 to 80 percent subsidy, but the subsidy aspect has not been funded for several years.[8]

In 2009, the Massachusetts program reported that, over the 10-year life of the program, $6.6 million in state funds had assisted 330 projects with an upside potential of 27,000 jobs and $4.1 billion in new investment. The Ohio, California, and Wisconsin programs are both more recent and less aggressive; so impact numbers are likely more limited.

Public Insurance Pool—In this model, the state or Metro would allow project proponents to make a payment to the government as closure for tailing environmental liability. The government could in turn use those funds to buy insurance policies to cover a pooled group of sites. This method of contribution to reach closure is similar in principle to the current program addressing contaminated sediments in the Columbia Slough. A pooled insurance model could be particularly effective in the Portland Harbor. The program could allow for small contributors to the Portland Harbor Superfund site (those only connected to the Harbor through stormwater discharge) to reach closure ahead of the final federal settlement. Upon completion of upland cleanup actions and implementation of stormwater best management practices, the parties would pay a premium that funds the environmental insurance. If the EPA or other potentially liable parties seek contribution from that party, the claim would be directed to the environmental insurance policy.

Considerations

- Connection to TIF or Tax Abatement—One way to pay for environmental insurance under any of the above options, is to craft a TIF or tax abatement program that is designed to offset some or all the extra cost of the environmental insurance. For example, if the determination is that the highest priority is the extra risks associated with business investment in the Superfund-impacted area, a TIF or tax abatement program could be crafted so that a public sector

[7] See: Massachusetts Brownfields Access to Capital Program - http://www.bdcnewengland.com/brownfields-redevelopment/brac-benefits-eligibility/
[8] See: http://www.calepa.ca.gov/Brownfields/Fair.htm

commitment (TIF or tax abatement) could automatically receive funding if the proposed project meets certain criteria. To limit the budgetary impact of such a program, the subsidy could be limited to the Superfund-related risks and would not include cost-cap insurance.

- Local government willingness to be associated with CERCLA liability
- Market availability of an environmental insurance product of this type
- Demand and potential use of the insurance pool. Even with reduced premiums, the insurance pool would likely still not be attractive for Type 1 Small Commercial sites with low cleanup costs
- Criteria for eligible applicants
- The degree to which the required standardization for the pooling works against program participation because limited participation could limit who can take advantage of it

Implementation Actions

- Further analysis of potential models for pooled environmental insurance
- Discussion with insurers on feasibility and interest in the program
- Discussion with property owners and businesses to inform them of the concept and survey interest level
- Refine program framework to craft into legislative proposal

Lead and Support

State, Metro, or Local Government could each lead.

MANAGING RISK

Targeted Typologies

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

M2. Model Purchase and Sale Agreement

Challenge—Purchase and sale agreements between buyers and sellers of contaminated properties can be a time-intense and variable process.

Solution—Create a model agreement with indemnification language and distinctions between upland and in-land water liabilities along with standard transfer issues such as due diligence period, timing of cleanup, warranties, and inspection period.

Mechanics—A model purchase and sale agreement could include:

- A menu of available government incentives that could apply to offset environmental remediation and infrastructure improvements, and implementation of green building and sustainability initiatives:
- Provide practical indemnification language for addressing past and future liabilities
- Provide language that differentiates and addresses upland and in-water environmental liability and cleanup
- Provide language that will address standard transfer issues (e.g. price, inspection period, down payment, due diligence period, reps and warranties, timing of cleanup and closing)

Considerations

Appropriate lead agency to develop model document

- Need for appropriate legal review of the model agreement
- Distribution and accessibility of the model agreement

Implementation Actions

- Determine lead agency to develop the model agreement
- Convene workgroup of appropriate experts (environmental, real estate, legal) to prepare model agreement

Lead and Support

State, Metro, or Local Government could each lead.

MANAGING RISK

Targeted Typologies

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

M3. Public Land Bank

Challenge—Brownfield properties often remain vacant, underutilized, or even abandoned because there is no buyer with patient capital and long-term vision. Local governments are typically reluctant to step in and acquire these properties because of the potential legal liability and financial implications.

Solution—Establish a regional or statewide land bank to acquire brownfield properties and position them for redevelopment

Mechanics—Land banks can provide an entity with the resources and long-term perspective to acquire and reposition constrained properties. Land banks are usually created to manage the orderly disposition of property that has come under local government ownership, most often through tax delinquency. The disposition process is governed by community plans rather than the short-sighted tendency of local agencies to try to "get the properties off our books." The orientation toward community planning means that many land banks also selectively acquire properties in order to address blight or to assemble properties that can be redeveloped under the unified plan.

Brownfields are a sub-set of these vacant properties. However the brownfields-land bank connection is not necessarily an easy one. Land banks may be reluctant to acquire brownfields for several reasons:

- Some land banks have a mission to address vacant housing and have little experience in brownfields or in commercial redevelopment;
- There may be liability concerns;
- There may be concerns that the agency will not be able finance cleanup costs.

There are successful examples of land banks addressing brownfields, particularly in Michigan and Cleveland, (both areas where the prevalence of abandoned manufacturing facilities combined with weak markets has probably led to significant tax foreclosure acquisition of brownfields).

Michigan land banks have made use of a state authority to use tax increment financing for brownfields. That is, all land bank properties were, in effect, designated as brownfields in order to qualify for tax increment financing.[9] Then, large batches of properties were included in non-contiguous TIF districts, and the sale of the most marketable properties created a revenue source to finance improvements to the more difficult properties.

[9] Michigan land banks are sometimes cited as "brownfields success stories." Readers should understand that Michigan land banks are primarily addressing vacant residential property that got branded as "brownfields" in order to qualify for TIF.

Suffolk County, New York recently announced a plan to address brownfields through a newly enacted state land bank authority. The key change that facilitated the brownfields-land bank connection was the ability to sell properties for less than the tax lien.

Other observers working on making the brownfields-land bank connection have concentrated on eliminating the liability concerns and on providing a funding source for remediation.

Considerations

- Potential legal limitations on the special powers of land banks in Oregon
- Local capacity and opportunities for land banks to be successful
- Identifying the proper agency to take a lead role

Implementation Actions

- Further analysis of the legal framework for land banks in Oregon
- Refine proposal of special authorities and powers of a land bank
- Identify appropriate level of government under which to operate
- Prepare proposal for legislation to enable land bank authority for local governments in Oregon

Lead and Support

State, Metro, or Local Government could each lead.

LINKING CLEANUP & DEVELOPMENT

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

L1. Regulatory Flexibility

Challenge—Contaminated or potentially contaminated properties face difficult redevelopment barriers and must be particularly profitable to off-set incurred cleanup costs. Development regulations may add additional land use limitations on already constricted sites.

Solution—Provide increased flexibility in allowing broader land uses for underutilized sites so that alternate uses can be considered if the cost of achieving a given use is an impediment to revitalization.

Mechanics—Local governments could apply a zoning code overlay to contaminated sites or create a brownfield inventory list for priority sites that would allow developers and property owners to develop the site with greater regulatory flexibility. The flexibility would allow a greater scope of outcomes and increase the changes that a site could be developed profitably.

Local planning staff could coordinate with DEQ to implement strategies to achieve regulatory flexibility and remedial actions that are cost effective and balance a project pro forma. Regulatory flexibility measures could waive permit and impact fees and provide: streamlined permitting, wider ranges of approved uses, development standard exemptions, and /or density bonuses on brownfield properties.

Considerations

- Regulatory considerations would need to still meet broader land use policies for an area while providing leniency with more detailed requirements
- Potential perception of unfairness from other property owners

Implementation Actions

- Further analysis of regulatory implications of this policy change
- Prepare model ordinance language that could be adopted by local jurisdictions

Lead and Support

Metro could draft model ordinances.

Local Governments would lead on implementation.

LINKING CLEANUP & DEVELOPMENT

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

L2. Brownfield Guidebook/Toolkit

Challenge—Landowners and developers are often unaware of resources available to support brownfield redevelopment and are typically wary of speaking openly with regulatory agencies for fear of liability.

Solution—Provide more effective resources to educate land owners and prospective buyers about the kinds of contaminants associated with different land uses, the costs of cleaning them up, and the redevelopment process and the resources available to assist these projects.

Mechanics—The Metro Brownfield Program, City of Portland Brownfield Program, and DEQ Brownfield Program are all engaged in education and outreach activities. One identified challenge to their efforts is the lack of a toolkit or manual that provides a concise but comprehensive guide to the cleanup and redevelopment process and the resources available to support these projects. Several models exist for this type of resource guide including one recently produced by the American Planning Association that provides a national perspective, and one published by the Washington State Department of Ecology in partnership with the Tacoma-Pierce County Health Department that is more locally focused.

Considerations

- Target audience(s) and level of detail of the guidebook(s)
- Engagement of stakeholders in guiding content
- Level of focus (statewide or Metro region)

Implementation Actions

- Identify appropriate agency to lead effort (potentially conduct as a joint effort between State, Metro, and City of Portland)
- Identify funding sources to develop the guidebook such as EPA State and Tribal Response Program funds
- Convene workgroup of various stakeholders to inform development of the guidebook

Lead and Support

State, Metro, or Local Governments could each lead.

LINKING CLEANUP & DEVELOPMENT

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

L3. Build Market Demand/Eliminate Stigma

Challenge—Brownfields represent a perceived higher risk real estate investment. They tend to be attractive to investors with higher risk tolerance.

Solution—Develop programs to link more risk tolerant investors and developers with brownfield properties.

Mechanics—A program to build market demand could function like an extension of Oregon's Industrial Site Certification program and Prospector site database. Metro and/or Business Oregon could develop a listing service that targets brownfield sites with development potential. The New Jersey Site Mart[10] and Pennsylvania Site Search[11] websites provide useful examples. The government agency would maintain the listing and actively market and promote these sites to prospective investors and business site selectors. Brownfields could be one subset of sites currently in the Industrial Site Certification and Prospector programs, or it could be a stand-alone initiative.

Specialized workshops or events could be held with developers that have experience with brownfields to introduce them to available brownfield properties that are considered to have strong market potential or that may be catalyst sites that support neighborhood revitalization efforts.

One special focus of this effort could be creating an easily accessible compilation of existing environmental information on properties in the Portland Harbor. The perception of potential contamination in this area often exceeds the reality of known issues. Providing access to environmental studies may help dispel stigma and misperceptions and provide potential purchasers with enough confidence to invest in this area.

Considerations

- Providing easily accessible information on incentives and tools available to assist with cleanup and redevelopment of brownfields together with the inventory of sites.
- Screening for eligibility to be on the list.
- Level and types of background information to provide on the sites.
- To encourage property owners to list their sites, provide additional incentives available only to sites on the inventory, such as tax incentives, regulatory flexibility, or eligibility for environmental insurance.

[10] See http://www.njbrownfieldsproperties.com/Default.aspx

[11] See http://pabrownfields.pasitesearch.com/

- Assistance to address the legal risks and stigma associated with listing of a property.

- Capacity for active marketing of the sites.

Implementation Actions

- Coordinate with Business Oregon to link this proposal with the Industrial Site Certification program and Prospector site database

- Conduct outreach to property owners, real estate brokers, developers, and business site selectors to survey interest and willingness to participate in the program

- Identify funding sources to support the program

Lead and Support

Business Oregon or Metro could each lead.

LINKING CLEANUP & DEVELOPMENT

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

L4. Universal Database

Challenge—Fully understanding the environmental issues at a brownfield property often requires collection and analysis of data around a larger area beyond the parcel boundary. Dynamics of groundwater flow in particular often demands study of a catch basin or larger area. While several projects in an area may collect groundwater data, it is challenging to access and share the information.

Solution—Create an open system to share environmental information across projects. This system could include analytical data on groundwater flow, contaminant concentrations, along with beneficial use determinations. Sharing this information across projects could result in a more refined understanding of complex systems and greater cost effectiveness.

Mechanics—Parties are required to submit data to the DEQ when conducting a site investigation or cleanup project under their jurisdiction. The database of information could be opened to limited access for retrieval of information. The City of Tacoma, Washington may be a model for the Portland area. To address area-wide groundwater concerns, the City is working with the State Department of Ecology to compile data from multiple cleanup projects and other sources into a central and accessible database.

The Regional Brownfield Scoping project has created the structure for such a database for the Portland metro region. Due to limitations of the study and available data, not all fields are populated. Additional resources would be needed to conduct research throughout the region as it was completed in this project's Study Areas, and to find other sources to fill remaining data gaps. Universal access issues and how to overcome participation and listing barriers would also need to be addressed. This database can also serve as an example for other regions throughout the state.

Considerations

- Liability issues related to making contamination data on a specific property publicly available
- Professional liability reservations about use of data collected by another investigator
- Potential to provide incentives to encourage parties to enter the database

Implementation Actions

- Determine appropriate agency to build and maintain this database (DEQ, Metro, or City of Portland)
- Identify funding source to support development of the database
- Coordinate with DEQ to structure and populate the database

Lead and Support

State, Metro, or Local Government could each lead.

LINKING CLEANUP & DEVELOPMENT

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

L5. One Stop Shop

Challenge—Successful redevelopment of brownfields requires navigation of state regulatory processes for cleanup along with permitting processes for construction. The multiple regulatory agencies involved may have different or competing interests. All of these regulatory processes occur within a time sensitive financing framework.

Solution—Create a system for inter-agency coordination for permitting and funding brownfield projects.

Mechanics—This proposal is an internal policy change and does not involve changes to laws or regulations. Create a Brownfield "team" with representatives from Metro, Cities, DEQ, and Business Oregon that coordinates permitting and funding activities for eligible projects. Pennsylvania's Brownfield Action Team program provides a useful model. The team would meet with the project proponent at an early stage of the process to outline the permit requirements, potential financial incentives, and a schedule for a project. The team would then meet periodically through the planning and permitting process to resolve any conflicting requirements and expedite review of the project. These types of meetings currently do occur opportunistically. This policy would formalize and advertise this system to make it a common practice.

Considerations

- Establishing a system of coordination without creating significant administrative burden
- Eligibility criteria. Could include:
    - Location in urban renewal area or similar special districts
    - Readiness of project to proceed
    - Project consistency with local planning and zoning

Implementation Actions

- Initiate coordination with staff from different agencies to explore feasibility of the proposal
- Refine operational framework and seek agreement from executive leadership of agencies

Lead and Support

State, Metro, or Local Government could each lead. Success of the program will depend on coordination among different agencies.

R1. Formalize Presumptive Remedies and Standards

REGULATORY

Typologies Targeted

Type 1—Small Commercial

Type 2—Industrial Conversion

Type 3—On-going Industrial

Type 4—Rural Industrial

Challenge—There is an opportunity for routine cleanup projects to be expedited through using standardized remedies and standards. DEQ often takes an expedited approach to common types of sites, but these guidelines and methods are not formalized.

Solution—Establish guideline documents for simple cleanup sites with common redevelopment uses.

Mechanics—DEQ staff with guidance from a stakeholder committee could develop these guidance documents, building on existing technical manuals. The guidance documents should provide enough certainty of expectations to allow routine cleanup projects to more expediently move through the administrative process. Note, these sites would still be required to meet all appropriate regulations and cleanup standards.

Considerations

- Degree to which existing technical guidance already addresses this issue
- Potential for standardized remedies to lead inadvertently to inflexibility
- Potential need for administrative rule-making to fully implement the policy

Implementation Actions

- Review existing technical guidance documents to identify areas where standards are most developed and areas that may lack guidance
- Convene stakeholder group to provide perspective to the agency on where presumptive remedies and standards may be the most useful

Lead and Support

Oregon DEQ lead with support from Metro and other stakeholders.

R2. Licensed Site Remediation Professional (LSRP)

REGULATORY

Typologies Targeted

Type 1—Small Commercial

Type 2—Industry in Cities and Town Centers

Type 3—Industry in Employment Areas

Type 4—Heritage Sites

Challenge—The number of contaminated properties and the length of the cleanup process are major challenges to brownfield redevelopment. Research of statewide case studies completed as part of this research study found that typical sites most often take at least two years to complete, and commonly take four to five years. In addition, more sites are entering the cleanup program each year than those finishing the remediation process.

Solution— In response to these same challenges, several states have created a program that gives licensed professionals authority to certify cleanups, decreasing the role of the state and the administrative process on every site. These programs are proving highly successful in increasing the number of cleanups conducted, decreasing the length of the cleanup process, and providing effective remedial actions.

Mechanics—Implementation in Oregon would require changes to state law, administrative codes, and internal agency policies.

The three primary elements (and an optional fourth element) of LSRP programs are described below. These represent the common elements of LSRP programs in Ohio, Massachusetts, Connecticut, and New Jersey:

- Licensing Program—Establish a licensing program to ensure that cleanups are managed by qualified professionals. Most states that have adopted the LSRP approach have established a licensing board and have detailed qualifications in the areas of education (including continuing education), experience, and written tests.

- Certification of Cleanups—Devolve cleanup authority for low- and medium-risk sites to licensed professionals. Such professionals would have the authority to certify cleanup and would also bear the liability for any issues arising from that certification should future related issues arise. The experience of other states is that the vast majority of site assessments and cleanups are conducted by LSRPs. The state audits a percentage (usually 10 to 20 percent) of the cleanup sites. One state (Ohio) requires the state to audit all sites that rely on institutional and engineering controls.

- Liability Release—Grant a liability release to innocent parties that employ qualified professional to remediate sites, contingent on state review of cleanup results. All states using the LSRP model offer a liability release or covenant not to sue. In three states the covenant is contingent on the state reviewing or auditing the site cleanup record. One state (New Jersey) has an automatic covenant based on certification of the cleanup by the LSRP.

- Mandatory Reporting of Known Contamination—An optional element adopted by two states (New Jersey and Massachusetts) is mandatory reporting and cleanup of known contamination. When property owners become aware of contamination, they are required to notify the state and hire an LSRP to conduct cleanup actions.

Considerations

- Requires shift in responsibilities of state Cleanup Program staff.
- Requires re-training of staff to conduct audits of cleanups.
- Potential perception that private consulting firms will not provide as high a level of cleanup work as state regulators; however, the experience of other states indicates that corporate liability concerns have made private firms take an even more conservative approach to site assessment and cleanup.
- The LSRP program has proven controversial both in states that adopted and attempted to adopt the program. Additional research and political outreach to stakeholder groups, from government, professional associations, labor groups, and local communities would be strongly recommended before this concept is considered further.

Implementation Actions

- Draft enabling statute for adoption through state legislation.
- Convene stakeholder group from government, professional associations, labor groups, and local communities to define standards and requirements for accreditation.

Lead and Support

State Legislature; Support from DEQ and local agencies

R3. CERCLA Prospective Purchaser Agreements

REGULATORY

Typologies Targeted

Challenge—Liability issues are often ranked near the top of concerns when developers and other professionals are asked about the various impediments to brownfield redevelopment[12,13]. The risk of assuming strict, joint, and several liability discourages potential developers of brownfield properties.

Solution—EPA could provide Prospective Purchaser Agreements, jointly with Oregon DEQ to provide certainty and liability protection to innocent purchasers of contaminated properties under federal Superfund Law. Proactive use of this tool could be encouraged around Portland Harbor to promote property transactions in the face of the Superfund designation.

Mechanics—EPA has the authority under CERCLA to execute Prospective Purchaser Agreements. The 2002 Brownfield Amendments included a Bona Fide Prospective Purchaser (BFPP) defense tool with the purpose of providing a legal liability defense based on an innocent party conducting adequate due diligence and taking appropriate care and precautions on a property. EPA intended that the BFPP defense would serve the same role as Prospective Purchaser Agreements without requiring significant agency involvement. However, the BFPP defense has been challenged in court and appears to have limitations rooted in the subjective definition of the due care provisions[14].

Type 3—On-going Industrial

In recognition of the special circumstances around the Portland Harbor, EPA could make a policy decision to enter into prospective purchaser agreements in this area. Eligibility for a prospective purchaser agreement could be limited to properties not located immediately adjacent to areas of contaminated sediments. To make implementation of this tool efficient, EPA and DEQ could establish a model prospective purchaser agreement for properties in the Harbor area based on existing state templates. The prospective purchaser agreement would need to be executed by both EPA and DEQ to provide sufficient liability protection.

Considerations

- This change in policy may need to be made at the highest levels of EPA and require a significant effort to make the case to policy makers

[12] U.S. Conference of Mayors. Recycling America's land: a national report on brownfields redevelopment. Vols. I-IX. 1993–2010.
[13] Wernstedt, K., P. B. Meyer, A. Alberini, and L. Heberle. Incentives for private residential brownfields development in US urban areas. Journal of Environmental Planning and Management 49(1):101-119. 2006.
[14] See Ashley II of Charleston, LLC vs. PCS Nitrogen. That decision sets a high bar for compliance with the due diligence and due care requirements that are connected to the BFPP defense.

- Commitment of EPA staff resources to execute the agreements in a timely manner

Implementation Actions

- Coordinate with stakeholders to assess interest in making this policy change

- Develop strategy to promote policy change at EPA

Lead and Support

EPA and DEQ lead with support from Metro and Local Governments.

R4. CERCLA De Minimis Protection

REGULATORY

Typologies Targeted

Type 3—On-Going Industrial

Challenge—The designation of the Portland Harbor as a Superfund Site has added a significant layer of complexity and uncertainty to redevelopment of properties on the waterfront and properties that contribute stormwater runoff to the harbor. There is uncertainty regarding remedial actions that may be required and assignments of liability.

Solution—EPA provides expedited settlement agreements for owners of properties that likely cause minor impacts to the Harbor.

Mechanics— The EPA can provide de minimis settlements for parties that have a small share of cleanup liability. To date, EPA has been reluctant to provide these settlements in the Portland harbor. Broader use of this existing tool could expedite cleanup and redevelopment of a large number of properties that are located within the contributing area to the Superfund site, but that have had small impacts are only linked to the harbor through the municipal stormwater system.

Considerations

- This change in policy may need to be made at the highest levels of EPA and require a significant effort to make the case to policy makers
- Commitment of EPA staff resources to execute the agreements in a timely manner

Implementation Actions

- Coordinate with stakeholders to assess interest in making this policy change
- Develop strategy to promote policy change at EPA

Lead and Support

EPA and DEQ lead with support from Metro and Local Governments