

Environment, Community and Health Program Project Proposal:

Project:

**Internship as Washington State Department of Community Trade and
Economic Development (CTED) Brownfield Project Coordinator**

Project Collaborators:

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**Sharon Kophs, Field Sponsor-Brownfield Program Manager, Washington State
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Project Synopsis:

Serving as an intern Brownfield Program Coordinator with the Washington State Department of Community Trade and Economic Development (CTED) I will gain hands on experience with financial resource assistance coordination, loan grant structures, client outreach, intra and interagency coordination, oversight and compliance supervision within the requirements of the Small Business Liability Relief and Brownfields Revitalization Act and State Model Toxics Control Act.

A key product from this activity is to research, compile and develop a Financial Resource Guide for Brownfield Redevelopment in Washington State. The development of this document has been identified by the inter agency Brownfield planning group¹ as an essential tool to assist small cities, rural communities and tribal governments obtain financing for contaminated sites cleanup and community development.

My goal is to complete the first draft of the document, with accompanying spreadsheet matrix and bibliography by June of 2004. The Financial Resource Guide will be published by CTED and made available to the public. A copy may reside at the Evergreen Environmental Health Regional Archive.

¹ Washington Department of Ecology; Washington State Community, Trade and Economic Development; Region 10 of the Environmental Protection Agency

Overview

General Purpose: Serving as an intern Brownfield Program Coordinator with the Washington State Department of Community Trade and Economic Development (CTED) I will gain hands on experience with financial resource assistance coordination, loan grant structures, client outreach, intra and interagency coordination, oversight and compliance supervision within the requirements of the Small Business Liability Relief and Brownfields Revitalization Act (BRERA) and State Model Toxics Control Act (MCTA).

A key product from this activity is to research, compile and develop a Financial Resource Guide for Brownfield Redevelopment in Washington State. The development of this document has been identified by the inter-agency Brownfield Planning Group² as an essential tool in assisting small cities; rural communities and tribal governments in obtaining financing for contaminated sites cleanup and community development.

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In the following section I provide the reader with an analysis¹ of the brownfields redevelopment in the context of recent legislation, the federal-state roles in the cleanup redevelopment process, and financial complexities, to familiarize the reader with the background issues of my internship project.

I then provide a personal accounting of how my project came to be; it's need, description and status. It should be noted that my program project started in the winter quarter because the opportunity for my internship arose earlier than originally intended.

² Washington Department of Ecology; Washington State Community, Trade and Economic Development; Region 10 of the Environmental Protection Agency

¹ Adapted from a forthcoming paper: Brownfields Financing Structure Analysis

Brownfields: A Contextual Overview

Federal Context

The Small Business Liability Relief and Brownfields Revitalization Act (BRERA) of January of 2002 provides a legal and structural mechanism for communities, site owners, and prospective property purchasers to address contaminated site cleanup and redevelopment efforts in a manner that is environmentally responsible and economically feasible. BRERA defines brownfields as “all...real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminate” (Public Law 107-108). The new law expands the definition of brownfields where “everything from abandoned gas stations to “mine scarred land” can qualify for brownfields program assistance. This gives communities considerable flexibility to address all types of sites and clean them up for new uses-not only traditional abandoned factories, but also other kinds of properties, from shuttered grocery stores to operating dry cleaners, to the abandoned orchards, and grain elevators of rural areas”³.

The new law is designed to alleviate an unintended consequence of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) where the real, potential or perceived contamination of real property hinders the sale and redevelopment of abandoned or underutilized property³.

Although CERCLA policy, which reflects a traditional regulatory approach, has been instrumental in targeting and cleaning the worst of contaminated sites⁵ and holding primary polluters responsible for remedial action costs of large scale or complex sites, the reaction by businesses to the threat of enforcement actions creates an impediment to

³ Bartsch, Charles. 2002. The New Law on Brownfields: The Small Business Liability Relief and Brownfields Revitalization Act. In *Environmental Practice*, Vol. 5, number 1, March 2003. Oxford University Press.

⁴ Perkins, John C. 2003. Editorial: The New Law on Brownfields, In *Environmental Practice*. Vol.5 Number 1, March 2003. Oxford University Press

⁵ U.S. Environmental Protection Agency, National Priorities List. High priority sites are ones that pose the greatest threat to public health or the environment. A threat is due to the amount of contamination, its toxicity, and how it could come into contact with people.

clean up and redevelopment of sites that rank lower in terms of public threat. The threat imposed by superfund liability and attendant cost has made contaminated properties appear to be highly risky ventures to prospective purchasers and developers. In practice the superfund cleanup process is primarily concerned with sites that pose significant public health concerns and are technically complex. Sites that are ranked lower in priority and whose cleanup is not currently mandated by enforcement action are often considered as liabilities by owners, financial institutions and prospective purchasers because of the perceived economic threat brought about by high remediation costs and uncertainties associated with finality of cleanup extent and liability relief. Given the option between accepting potential future CERCLA enforcement action, unknown risk liabilities, and open-ended remediation costs involved in redeveloping a contaminated site or choosing a Greenfield site (an undisturbed or new property, often in suburban or semi-rural areas) that carries no contamination risk many developers and businesses opt for the latter. The attraction for businesses to locate at Greenfield sites has been a significant contributor to urban sprawl in metropolitan areas while leaving core areas of both urban and rural communities as zones of blight that are bereft of economic opportunity.

Communities faced with the “Brownfield Problem” must shoulder the burden of a host of environmental, social and economic costs⁶:

- Economic consequences of damage done to humans (loss of life, morbidity costs, treatment cost, etc.);
- Economic costs to ecosystem damage (potential losses from species extinction, additional costs to treat contaminated water supplies, etc.);
- Short run revenue losses to local government treasuries due to reduced real estate values, associated with both contaminated sites and with those adjacent to brownfields or otherwise stigmatized by their presence;

⁶ Meyer, Peter B. 2003. Brownfields and Red Ink: The Costs of Contaminated (and Idle) Land, In Environmental Practice, Vol.5 Number 1, March 2003. Oxford University Press

- The economic reflections of the social costs and conflicts associated with the environmental inequality across racial, ethnic or income class lines that are generated by brownfields;
- Decreasing density of economic activity in urbanized areas as land is abandoned and underutilized, and the associated travel costs, with residents and businesses needing more time for travel; and potentially, both human health and business expansion costs generated by air pollution from increased automobile use; and
- The longer-term costs of poorly planned urban expansion or “sprawl”, including the capital costs of underutilized and redundant infrastructure, social and economic costs associated with delivery of emergency services to less densely settled areas, and potential adjustment cost associated with the suburban location of aging populations that may need transportation services not now available.

The Brownfields Revitalization and Environmental Restoration Act of 2001 sets the stage for new state-community-private partnerships to address the above concerns. BRERA helps these partnerships overcome significant early stage financial hurdles by providing grant money for site assessment, remediation planning and actual cleanup. These moneys can be leveraged to provide in kind matching funds for property acquisition and redevelopment financing. The law also clarifies complex and thorny liability issues that impede site reuse by prospective buyers and clarifies the state –federal relationship regarding cleanup finality and allowing state voluntary clean up response programs to define specific criteria in determining how clean is clean at any given site.

BRERA authorizes \$200 million per year for project grant funding, for four years for the following⁷:

- Site assessment grants, typically up to \$200,000 per site, although this can be raised depending on the site circumstance.
- Grants for cleanup—either to make remediation Grants of up to \$200,000 to governments or non-profits to provide capital for cleanup revolving loan funds

⁷ Bartsch, Charles. 2002. The New Law on Brownfields: The Small Business Liability Relief and Brownfields Revitalization Act. In *Environmental Practice*, Vol. 5, number 1, March 2003. Oxford University Press.

(RLFs) of up to \$1 million per applicant. Although the funding requires a 20% match in funding, it allows a wider range of activities including non-economic uses such as parks and recreation. Awards are based on factors that include the extent that moneys will be used to protect human health and the environment, spur redevelopment and create jobs, preserve open space and parks, represent fair distribution between rural and urban communities, involve local communities and reduce risks to low income communities and other “sensitive populations”.

BRERA makes legal provisions to clarify liability issues that have previously deterred public-private partnerships from developing and reusing contaminated sites. The provisions protect parties, who wish to redevelop a site, and have not caused or contributed to the contamination, from super fund liability.

Specifically, BRERA:

- Exempts from superfund liability contiguous property owners-those who did not contribute to the contamination and who provide cooperation and access for the cleanup;
- Clarifies innocent landowner defense to Superfund liability, making it easier to invoke by referencing nationally accepted Association for Standards, testing and Materials (ASTM) standards in the law, and making easier to determine whether the defense applies; and
- Exempts from Superfund liability prospective purchasers - those who did not know about the contamination at the time of acquisition, who are not responsible for contamination at the site, and who do not impede its cleanup - as long as they carry out an “appropriate due diligence investigation.

The Brownfields Revitalization Act formally shifts virtually all responsibility for brownfields sites to the states; to fund this mandate, the act provides funding through the USEPA to support state voluntary cleanup programs. Depending on congressional appropriations as much as \$50 million may be available annually to states and tribes so that they might establish and enhance state voluntary cleanup and response programs; this is more that triple the pre-enactment level of funding.

State of Washington Context

The Washington State Department of Ecology (DOE) and Department of Community Trade and Economic Development (CTED) have developed an Interagency Agreement for brownfields agency coordination. In 2000 a joint effort by DOE, CTED, King county, The City of Seattle, and the City of Tacoma won a \$1.5 million grant from the USEPA to capitalize a Brownfields Cleanup Revolving Loan Fund. In 2003 the city of Spokane joined the coalition through a grant of \$800,000. To date the revolving loan fund has grown to over \$5.1 million dollars with each stakeholder providing oversight of approximately \$1.2 million dollars each.

CTED and DOE have been in the process of developing an inter-agency approach to the brownfields redevelopment process. Each agency contributes expertise in assisting communities, tribes and private parties through the process. The three cities and King county have the technical and financial resources to manage their projects on a quasi-independent basis although there is considerable intra-entity coordination.

DOE Toxics Cleanup Program maintains the Confirmed and Suspected Contaminated Sites List database. This integrated site information system lists over 9000 sites by county, statewide. It contains key information such as location, ownership, clean up status and legal disposition as whether it is a voluntary cleanup, legal enforcement or otherwise. It also list the confirmed or suspected contaminates and the media affected. To be considered for brownfield assistance funding a site must first be listed in this database and registered as a voluntary cleanup action⁸.

The Voluntary Cleanup Program in Ecology's Toxics Cleanup Program provides site-specific technical and administrative assistance before during and after the cleanup phase

⁸Washington State Department of Ecology. 2003. Toxics Cleanup Program Integrated Site Information System Confirmed and Suspected Contaminated Sites List.
<http://www.ecy.wa.gov/programs/tcp/cscs/CSCSpag.HTM>

of a brownfield project. The program also sets site-specific criteria to establish finality in cleanup level⁹.

The Toxics Clean Up Program also administers Remedial Action Grants where grants in the form of dollars are provided to local governments, cities, school districts, fire districts, utility districts and port districts to assist in the actual clean up phase. Approximately \$20 million in grants are awarded to these entities each biennium¹⁰.

The Business Finance Unit of CTED is the lead agency and funding manager for brownfield redevelopment projects. While DOE provides regulatory compliance and technical assistance for the clean up phase, CTED is responsible for site qualification, legal liability analysis, client qualification, financial analysis, funding assistance coordination and redevelopment planning. The extent of assistance CTED provides to communities varies considerably and is largely dependant upon the communities ability to marshal technical and staffing resources. One hand larger cites and counties have considerable resources to draw from and require minimal assistance from CTED. On the other hand smaller cities and rural communities have minimal staff and experience in navigating a complex bureaucratic, regulatory and financial maze requiring an increased level of assistance.

Show Me the Money! Project Financing

The majority of brownfields projects in smaller communities are cases where the communities acquired legal ownership of a derelict property by means of condemnation, or delinquent tax foreclosure. These sites represent considerable liability and public health risks and perpetuate the downward economic spiral that many rural communities are facing in Washington State. Conversely the sites also present an opportunity to correct chronic public health problems, improve civic infrastructure, and spur economic development by promoting local business opportunities. Although each site and

⁹ Washington State Department of Ecology. Voluntary Cleanup Program. 2002. Guide to agency Assistance for Brownfields Redevelopment in Washington State. # 97-608. <http://www.ecy.wa.gov/biblio/97608.html>

¹⁰ Washington State Department of Ecology. 2002. Toxics Cleanup Program. The State of the Cleanup Report. # 02-09-043. <http://www.ecy.wa.gov/biblio/0209043.html>

community generates unique set of needs and challenges in realizing a successful outcome for redevelopment they all necessitate a common requirement for financial assistance at nearly every phase of the process.

The resources discussed earlier represent only the tip of the iceberg of available financial resources. Financial resources may come in the form of grants that may or may not require matching funds (these are especially important to rural and low income communities because of constraints in repaying loans), loans and loan guarantee programs, tax incentives and credits, professional, technical and other services. The trick is to identify funding sources, that are appropriate for the project and for which the client can qualify, amongst a confusing host of governmental agencies, foundations and non-profit organizations. The following is an example (albeit limited) of the “structure” of financial resource opportunities:

- Federal assistance from the Departments of; Agriculture, Commerce, Energy, Transportation, The Treasury, EPA, Housing and Urban Development, may provide assessment grants; cleanup grants and loans, economic technical assistance, infrastructure support, transportation grants, sustainable development planning, job training grants, and tax incentives;
- State level assistance from CTED, DOE, Transportation Improvement Board, Community Economic Revitalization Board, Public Works Board, Infrastructure Assistance Coordinating Council, Centennial Water Fund, Housing Trust Fund, and The Interagency Committee for Outdoor Recreation (Departments of Fish & Wildlife, Natural Resources and State Parks & Recreation Commission) provide state cleanup grants for public entities, community development block grants, transportation and infrastructure design and improvement assistance, tax increment financing, 0.08 sales tax for small communities program, Enterprise zone designation, bonding assistance, fish and wildlife recovery grants, parks and trails funding to name a few;
- Foundations and non-profits may provide grants of loans, technical assistance or in kind services for job development and training, environmental and resource recovery, parks and recreation, green building and design, and public housing.

To date there is not one document that assembles the vast array of financial information. The need to develop a central repository of financial resources is deemed a key element in the development of the inter-agency Brownfields Redevelopment Assistance Program.

Reflections: Internship Project Development, History and Status.

I have been interested in the brownfields redevelopment issue for approximately one year. Brownfield redevelopment seems to be a natural fit with my interest and experience in community development, sustainable design, and environmental restoration and health. While exploring project ideas during the winter quarter I contacted the Department of Ecology's Toxic Cleanup Program to inquire about potential brownfield projects that I might participate in. I was put into contact with Sharon Kophs Brownfield Project Manager with Community, Trade and Economic Development. Shortly thereafter Ms. Kophs offered me an intern position as a Brownfield Project Coordinator for the coming winter and spring quarters; hence I began my project early.

Initially we had hoped that I would gain insight into the brownfield redevelopment process by providing oversight to two ongoing projects, one in Raymond Washington and one in Morton, Washington. Unfortunately both projects ran into legal snags early into the quarter and were delayed for an unknown period of time. While mulling over options for 'plan B', Ms. Kophs strongly suggested that I consider tackling the Resource Guide project. Her reasons for doing so were: 1). All projects were completely dependant upon combining multiple resources to assist in all phases of the project. The ability to amass the need funds is the single most important element in a project. 2). As such CTED and DOE agreed that the Resource Guide is a top priority for this year 3). Following and knowing where the money was at provides the best route of understanding the complex brownfield process and would offer me a broad exposure to a wide array of stakeholders. 5). Nobody had a clue (but her) of the extent of resource availability and where to get it and she did not have the time to develop it. 6). It fit with my schedule. I also felt that

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even though I have never considered myself a “money guy” this would provide a first class opportunity to learn the economic side of development project (a glaring hole in my education). How could I say no. I began this project about three weeks ago.

To date, I have collated, by agency, over one hundred funding sources that have the potential provide some sort of assistance to various components of a brownfield project. To assist in tracking the data and sorting for phase/project type applicability, I developed an Excel spreadsheet matrix that list the program description by agency and it relevance in adjacent columns. Once the spreadsheet is done (although I expect it to change as this is intended to be a living document) I will begin to write a program-by-program description, in a common format, that initially focuses on the most pertinent programs that bear upon the redevelopment aspects.

The end of March is the target date for the draft issue of the Resource Guide and I hope to continue its refinement during the spring quarter. We have a June 2004 target for publishing the resource Guide as a public document.

John Means

Appendix:

Reference:

Bartsch, Charles. 2002. The New Law on Brownfields: The Small Business Liability Relief and Brownfields Revitalization Act. In *Environmental Practice*, Vol. 5, number 1, March 2003. Oxford University Press.

Meyer, Peter B. 2003. Brownfields and Red Ink: The Costs of Contaminated (and Idle) Land, In *Environmental Practice*, Vol.5 Number 1, March 2003. Oxford University Press

Perkins, John C. 2003. Editorial: The New Law on Brownfields, In *Environmental Practice*. Vol.5 Number 1, March 2003. Oxford University Press

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Washington State Department of Ecology. 2002. Toxics Cleanup Program. The State of the Cleanup Report. # 02-09-043. <http://www.ecy.wa.gov/biblio/0209043.html>

Attached:

Internship Learning Contract

Draft Excel Spreadsheet Matrix2/16/2004ⁱ

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