



Brownfields Redevelopment

Smart Growth Recommendations from New Jersey Future

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Cleaning Up Brownfields in New Jersey

There are an estimated 10,000 brownfields in New Jersey.¹ Defined as sites that are no longer in use and contain or could potentially contain contamination, brownfields are significant environmental challenges for the towns in which they are located. The pollutants present at many brownfields locations can pose a threat to community health and safety. Run-off from these sites can affect local ground water. Exposure to toxic substances on the site is also an ongoing danger for surrounding residents.

Brownfields have negative effects economically as well. Their presence tends to lower the value of surrounding properties, a serious consequence in neighborhoods already struggling with abandonment and disinvestment. For municipalities, these sites are a heavy burden, often requiring closure and monitoring while providing little tax revenue. The burden is especially onerous in many of the state's urban areas, which have numerous brownfields and little available land for new tax ratables.

Yet these sites also represent a unique opportunity. Because many are located in older communities with transportation, employment, and other key elements of infrastructure, brownfields are the ideal places to encourage redevelopment. In a state where open space is at a premium, redeveloping brownfields allows the state to grow in a way that is sustainable by both enhancing the environment in existing communities and relieving development pressure on farmlands and other open spaces. According to research from the New Jersey Department of Environmental Protection (DEP), for every one acre of brownfields redevelopment, 4.5 acres of greenfields are saved from development.²

New Jersey can harness brownfields redevelopment to achieve multiple goals. Both the State Development and Redevelopment Plan and Governor

Recommendations in Brief

Successful brownfields redevelopment in the state will require:

1. Maintaining a strong liability protection for closed cases
2. Establishing more flexible review procedures
3. Incorporating risk-based clean-up standards for non-residential sites
4. Prioritizing sites with the potential to spark larger economic development
5. Replacing funds once available to brownfields projects from the Environmental Infrastructure Trust
6. Increasing the involvement of community leaders in brownfields redevelopment planning
7. Incorporating open space into brownfields redevelopment projects

Corzine's 2007 Economic Growth Strategy advocate brownfields redevelopment as a vehicle for economic growth and sound land-use policy. For municipalities, brownfields redevelopment can serve as a way to leverage private funds to remediate contamination, provide new tax ratables, and help revitalize neighborhoods. For residents and businesses located near a brownfield site, redevelopment can help raise property values and provide new life to struggling neighborhoods.

Key Issues in Brownfields Redevelopment

New Jersey is recognized as a national leader in brownfields redevelopment. Through its various agencies, the state offers numerous programs and incentives for brownfields remediation and reuse

1. [Http://www.nj.gov/dep/srp/brownfields/faq/#howmanysites](http://www.nj.gov/dep/srp/brownfields/faq/#howmanysites).

2. Department of Environmental Protection, New Jersey's Environmental Trends, Chap. 5, <http://www.nj.gov/dep/dsr/trends2005/pdfs/brownfields.pdf>.

(more information about these programs may be found at <http://www.nj.gov/dep/srp/brownfields/>). Yet, while the state has made a concerted effort to encourage the remediation and reuse of brownfields, issues still remain.

Addressing Liability

Liability protection is an essential component of brownfields redevelopment, providing lenders and developers a measure of legal and financial certainty when taking on brownfields projects. In general, the DEP will seek to pursue the original polluter, or its legal successor, for contamination on brownfield sites. Under the Spill Compensation and Control Act, the department will provide protection from liability in the form of a No Further Action (NFA) letter for third parties who did not cause the original contamination and agree to remediate the site to DEP standards. Liability protection under NFA letters is not absolute; there are several reopener clauses that can allow the DEP to revisit a case, including a change in the use of a property and updated remediation standards that change by an “order of magnitude.”³

Recently, the DEP has proposed revised soil remediation standards that, for many contaminants, have changed by an order of magnitude from previous standards, thus raising the possibility that already remediated sites with NFA letters will be revisited. The DEP says the changes reflect the evolving science surrounding exposure to contaminants. However, developers and others subject to the new regulations are concerned that the changes will increase the cost of compliance, thus making brownfields redevelopment less financially viable and consequently less attractive to investors. The change in standards also raises doubts about the reliability of NFA letters as long-term protection from liability associated with brownfields redevelopment. The DEP should recognize these liability concerns and ensure that the new standards do not negatively affect sites with previously obtained NFA letters.

Getting Through the System

The Permit Process

As the regulator of brownfields remediation, the DEP has the responsibility of ensuring the safety of projects built on former brownfield sites by reviewing and approving remediations. This can put the agency at odds with the regulated community, which accuses the DEP of being overly restrictive in its rules and too slow to keep pace with development projects. Navigating the process of environmental regulation for brownfields projects is time-consuming and expensive for developers, presenting a serious barrier to redevelopment efforts. To make brownfields redevelopment a more attractive alternative to building on open lands, the process for remediating and reusing these sites must become more manageable. Today there are approximately 250 to 300 case managers who review 4,000 cases annually. The DEP estimates it would take a significant increase in the number of staff members to ensure a 60-day turn-around time for submissions.⁴ Given the state’s current budget situation, that appears unlikely. However, in the absence of a major staffing increase, there are things that can be done to help speed the review process:

- ✓ *Establish a more efficient review process.* Case managers should be encouraged to take into account site-specific conditions when formulating a remediation work plan, rather than rigidly applying the technical regulations without regard to actual conditions. This approach would reduce unnecessary work and speed the pace of remediation reviews. In the past, the DEP has allowed licensed third-party contractors to inspect low-level remediation projects, freeing DEP staffers to deal with more serious cases. This practice could be expanded to encompass more sites.
- ✓ *Use risk-based standards.* In Pennsylvania, regulations allow for the cleanup of brownfields to standards based on site-specific conditions and the potential future uses of the site. This approach balances safety with pragmatism, and is based on site-specific risk to human health rather than “cleanup policies requiring every site in this Commonwealth to be returned to a pristine condition.”⁵ New Jersey should ex-

3. An order of magnitude is one decimal place. For example, if the previous standard was to reduce cancer risk by one in 10,000, an order of magnitude would make it one in 100,000. Or if the previous acceptable level of contamination for a particular substance was 50 ppm (parts per million), an order-of-magnitude change would make it 5 ppm.

4. Addressing Backlogs, Draft White Papers, 8/27/07, <http://www.nj.gov/dep/srp/stakeholders/whitepapers>.

5. Act 2, <http://www.palrb.us/pamphletlaws/19001999/1995/0/act/0002.pdf>.

plore incorporating such risk-based standards for nonresidential sites as a way to make the remediation process more cost-effective.

- ✓ **Prioritize sites for economic development.** The DEP, through its Brownfields Development Area (BDA) program, prioritizes sites within BDAs for faster approvals and technical assistance (see the sidebar, “Spotlight on the Oranges”) because such sites can serve as a catalyst for larger redevelopment. The department should provide the same accommodation to sites outside of BDAs with a similar capacity to spark larger economic development. These sites could include those within redevelopment plans, transit villages, or designated centers.

Closing the Financial Gap

Securing financing for brownfields projects is a major hurdle faced by potential redevelopers. Because traditional lenders, concerned about uncertain costs and liability, are often hesitant to provide financing, the state has a number of ways to provide funding. One of those funding sources is the Environmental Infrastructure Trust (EIT). The EIT is an independent state authority that provides low-cost financing for environmental infrastructure, primarily related to water. For years, the EIT has been a major source of financing for infrastructure related to brownfields projects. Recently, as a result of strained resources, the trust reorganized its funding priorities, with brownfields-related projects no longer enjoying the prominence they once had. The effect of this policy change remains to be seen, although it will almost certainly mean that there will be less money available to brownfields projects than in the past. To continue to encourage brownfields redevelopment, the state should ensure that funds are available for projects such as the ones that were previously financed by EIT.

Involving the Community

Community participation is one of the most critical and one of the most overlooked aspects of brownfields redevelopment. Residents living around a brownfield have an important stake in the future of the site. For years they have had to live with the blight, and the health risks, associated with the brownfield. They will also be the people most affected by any reuse of the area, and they should be involved in the redevelopment process.

Currently, laws require the party conducting a

brownfield remediation to notify only the municipal clerk in the town where the site is located. There is no requirement for notifying residents of the surrounding community. Nor is there state money available for community groups to hire their own experts to review technical information related to the remediation work. In New York, California, and Massachusetts, Technical Assistance Grants (TAGs) are available to nonprofit groups that are affected by remediation work on certain brownfield sites. The federal government also offers TAGs to community groups affected by remedial work at sites on the Environmental Protection Agency’s National Priority List, also known as Superfund sites.

In August 2007, the DEP proposed new rules governing notification of brownfields remedial work that would extend notification requirements to residents within 200 feet of the site, as well as sensitive communities and resources in the area, such as schools, day-care centers, and nursing homes. The proposed rules would also require a sign to be posted on the site specifying the nature of the remedial action taking place on the site.

This proposal is an important step in the direction of full public participation in an important community process. As the DEP notes in the draft rules, “...early, two-way communication with residents, business owners and local officials affected by remediation activities can be critical to a successful investigation and clean-up. ...With an effective outreach strategy, the parties responsible for remediation can anticipate the needs and concerns of the community and address them proactively.”⁶

The development community should also encourage public participation in remediation projects. Having the community involved from the outset in any project, especially brownfields redevelopment, lends credibility to the effort and helps identify and resolve issues that could become major problems.

Including Open Space

The location of many brownfields, in urban areas near transportation and infrastructure, makes them attractive sites for redevelopment. For the same reason, many brownfields are also ideal candidates for conversion to parks and open space. Including open space in brownfields redevelopment can have a number of benefits, including remediation of contamination, raising surrounding property values,

6. Notification of the Remediation of Contaminated Sites and Public Outreach, Proposed Changes. <http://www.nj.gov/dep/rules/proposals/080607b.pdf>, p. 3.

and providing recreation opportunities to underserved areas.

A 2001 study by the International Economic Development Council examined seven projects in urban areas, and found that converting brownfields to parks and other green space resulted in a 106 percent increase in surrounding property values, on average.⁷ Newark, New Jersey's largest city, which has 476 sites listed on the DEP Known Contami-

nated Site List, also has a severe lack of parkland. According to the Trust for Public Lands, Newark has only 2.9 acres of parkland for every 1,000 residents, the fewest of the nation's 55 largest cities.⁸ For Newark and cities like it across the state with little or no open land, remediated brownfields represent some of the only opportunities to provide new parkland for residents.

Restoring brownfields to green spaces can have

A Spotlight on the Oranges

The cities of Orange and West Orange have teamed up to take advantage of an innovative state program for brownfields remediation known as a Brownfields Development Area, or BDA. The program, which is administered through the DEP, offers a chance for communities to plan comprehensively for brownfields remediation and reuse, while receiving technical and financial assistance from the state. The program requires that an area have multiple sites in need of remediation.

The focus of the Orange-West Orange BDA is the Valley Neighborhood, a former industrial area that encompasses portions of

both municipalities. At one time, the neighborhood was the center of a booming hat-making industry. Today, many of the former factories are vacant and contaminated, placing a burden on the neighborhood and the municipalities that contain it. In accordance with BDA requirements, a steering committee was formed, made up of municipal officials, property owners, developers and community residents. Together, they identified 25 brownfields properties and have worked with the DEP to investigate and begin remediating those

sites. Ultimately, the vision for the Valley Neighborhood BDA includes compact, mixed-use development with residential and commercial space.

The BDA approach to brownfields remediation is innovative because it provides an opportunity to address several brownfields sites at once and allows communities to create a comprehensive vision for the future of those sites. Including the people of the community in the process is especially important because they have borne the brunt of the negative impact of the brownfields and will have to live with the new uses that result from redevelopment. Bringing all the stake-



Harvard Printing Site, Orange

holders, including community members, in at the beginning of the process and comprehensively planning for multiple sites will invariably lead to a better outcome than piecemeal redevelopment. Because municipalities have become aware of the advantages, the BDA process has become increasingly competitive. While the number of BDAs is limited, every town with brownfields can, and should, embrace the spirit of the program and begin to develop a community-based vision for redevelopment.

7. International Economic Development Council, *Converting Brownfields to Green Space*, 2001.

8. Trust for Public Lands, *An Open Space Analysis*, Newark, New Jersey, 2004.

ecological benefits as well, according to the New York/New Jersey Baykeepers Association,⁹ including cleaner air and water and habitat for endangered species and migratory birds. Along waterways, brownfields converted to green space can serve as low-cost flood protection barriers while providing recreational access to waterfront areas.

Acquiring these sites and converting them to green spaces is costly and, unlike other uses, offers no direct tax revenue to a municipality. The Hazardous Discharge Site Remediation Fund (HDSRF), however, does provide an incentive to public entities to convert brownfields to green space. The fund provides a matching grant of up to 75 percent of the cost of remedial action if the site is used for recreation or conversion, compared to 50 percent for affordable housing and 25 percent for using innovative remediation techniques. Funds from the DEP's Green Acres Program are also available to municipalities for the acquisition of open spaces, including brownfields. Even with these incentives, the costs of remediating a brownfield can be prohibitive for a municipality. However, by working with developers, towns can provide for open space. For example, a town could allow a developer to build at a higher density on one portion of a site while preserving the rest as open space.

Recommendations

New Jersey has consistently made brownfields redevelopment a priority, and has established numerous programs and policies to promote the reuse of brownfields. Still, more needs to be done to unlock the full potential of positive use of brownfields sites in our state:

1. **Maintain strong liability protection.** Recent rule changes by the DEP have raised the possibility of re-opening some previously closed brownfields cases. The DEP should ensure that the new rules do not threaten old cases
2. **Create more flexible review procedures.** Today, the DEP review process for brownfields redevelopment projects is complicated, time-consuming, and expensive. Incorporating more flexibility into project reviews could help make the process more efficient and less expensive for both parties.

3. **Take a risk-based approach to clean-up standards for non-residential sites.** The DEP should explore incorporating risk-based clean-up standards, similar to those used in Pennsylvania for some non-residential sites. These standards make remediation more flexible and cost-effective for developers.
4. **Prioritize sites with economic development potential.** The DEP offers faster approvals to sites located within a Brownfields Development Area, in part because it recognizes that redeveloped brownfields have the potential to spark larger revitalization. Those same benefits should be extended to other sites outside BDAs but with the same catalytic potential.
5. **Replace funding from the Environmental Infrastructure Trust.** In the past, EIT money has provided an important source of funding for brownfields projects. Now that EIT is shifting its priorities, a new source of state funding should be made available to brownfields projects.
6. **Increase the involvement of community leaders in brownfields redevelopment planning.** Involving the community early on in a brownfields redevelopment project gives legitimacy to the project and can help avoid conflict later on. The state should explore providing technical assistance grants to community groups affected by brownfields projects.
7. **Include green space in brownfields redevelopment.** Many brownfields are located in urban areas and along waterways. Converting some of these sites into green space would provide recreational opportunities to urban residents as well as habitat for riparian species. Where possible, municipalities should work with redevelopers to convert some sites or portions of sites into publicly accessible green space.

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9. New York/New Jersey Baykeepers Association, *Converting Brownfields to Greenfields*, 2005, <http://www.nynjbaykeeper.org/pdffiles/btbg.pdf>.

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Brownfields, the contaminated industrial sites that dot the New Jersey landscape, are a safety hazard to nearby residents, as well as a blight on the landscape of the surrounding community. Yet because many brownfields are located in older communities with existing transportation, employment, and other key infrastructure, they provide ideal opportunities for growth.

The state has already taken steps to encourage the remediation and redevelopment of these sites, but more needs to be done to unlock their full potential. The following analysis, part of the New Jersey Future Smart Growth Recommendations Series, presents some of the most pressing issues confronting brownfields redevelopment today and recommends ways to improve the current process.



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