



Theodore R. Kulongoski
Governor

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To: Economic Revitalization Team (ERT) Directors

From: Gabrielle Schiffer, ERT Special Projects Coordinator
Karen Homolac, OECDD Brownfield Coordinator
Brian Fuller, DEQ Western Region Brownfield Coordinator
Bev Thacker, OECDD Industrial Lands Specialist
Mike Wolf, DEQ Western Region ERT Coordinator

Subject: Evaluating Oregon's Industrial Brownfield Redevelopment Strategy -
REVISED

Approved by the ERT directors in April 2004 as an important component of the Governor's Industrial Lands Initiative, "Oregon's Industrial Brownfield Redevelopment Strategy: Reusing Industrial Lands" supports the following state policy objectives:

- Adequate supply of industrial land for job creation
- Efficient use of state infrastructure investments
- Protection of the natural environment
- Conservation of resource lands
- Reduced risks to public health

To date, implementation of the industrial brownfield redevelopment strategy has met with limited success due to a number of factors including:

- Inadequate funding and staffing for brownfields assessment and cleanup at both the Oregon Economic and Community Development Department (OECDD) and the Department of Environmental Quality (DEQ) due to the recent state budget shortfall.

- In some cases, local jurisdictions may be interested in cleaning up former industrial sites, but for non-industrial future uses, e.g. mixed use commercial/residential development. OECDD currently has funds/financing only for sites that will remain in industrial use.
- It is difficult to provide definitive answers to local jurisdictions and property owners about how the state can help with cleanup without first understanding a little about the nature of the proposed cleanup project. Every brownfield property is unique, and funding/financing programs are limited in both availability of funds and the kinds of contamination or clean up actions the funds can be used for.
- OECDD's funding programs require that owners of contaminated property work with DEQ to assess their properties and develop cleanup. In some cases, owners of brownfield sites may be reluctant to bring their properties to DEQ's attention because they don't yet know the costs to clean up the site, and they fear possible regulatory action that might require cleanup [NOTE: Unless the site is a high priority for investigation or cleanup (meaning that it poses a significant threat to human health or the environment), regulatory action by DEQ is not likely]. Some owners of contaminated property, and some potential purchasers of those properties, are confused about the relationship between legal liability and getting a property cleaned up.

Outcome of ERT Outreach on Industrial Brownfield Reuse

Even though each ERT region identified a number of existing industrial brownfield sites, specific outreach to local jurisdictions resulted in only seven completed "brownfield site reuse intake forms." Two of these sites are now in the process of clean up.

In addition, interest by the City of Albany, resulted in a brownfield redevelopment workshop in early 2006. The workshop provided city staff and property owners with information on brownfield cleanup with specific focus on the Stone Forrest property (a 23 acre former plywood mill operation) and a number of former industrial sites in the City's Riverfront Urban Renewal District. Although the day-long workshop organized by the ERT regional coordinator, OECDD's brownfield coordinator and DEQ staff has not resulted in specific clean up action to date, it has generated interest by other property owners in the general vicinity in brownfield redevelopment.

Brownfields Cleanup is Part of "Project Ready" Certification

Of the 41 industrial sites certified as "project ready" to date, six have needed contamination issues resolved prior to qualifying for certification. Two of the sites were contaminated as a result of prior industrial agricultural practices. These sites required relatively simple cleanup such as contaminated soil removal or institutional controls

placed on the site such as limiting future use to industrial use. Even though these sites had soil or water contamination, they would be considered "greenfield" sites rather than "brownfield" sites.

Four of the sites that have been certified would qualify as brownfields, both real or perceived. The Boeing site in Gresham and the Riverplace Parkway Corporate Center in Portland were certified after the owners entered into a cleanup agreement with DEQ and had a cleanup plan in place that could be completed within 180 days. The remaining sites were certified after additional assessment work indicated that suspected contamination was not as serious as originally thought and no additional work was needed.

Certification is pending on three other industrial brownfield sites. One of these, the former Avison Mill Site in Molalla, will need capping over some more severely contaminated areas before it can be certified as "project ready."

Existing State Tools/Resources

OECDD and DEQ work in partnership when it comes to cleaning up brownfields. The following tools and resources are currently available for brownfield cleanup and redevelopment at the two agencies:

Existing OECDD Tools/Resources:

Oregon Coalition Brownfields Cleanup Fund (BCF) - The program is funded through a Cooperative Agreement between the U.S. Environmental Protection Agency (US EPA) and OECDD. It offers low-interest loan and grant financing options to assist private persons and local governments to cleanup and redevelop brownfields. These funds come with all the federal regulatory cross-cutting requirements.

\$2 million in EPA clean-up funds became available May of 2005. Loan awards to date from fund totals \$668,000 to the ACME Lilly Property Cleanup in north Portland. Approximately \$1.34 million remains available for eligible cleanup projects.

Brownfields Redevelopment Fund (BRF) - Created by the Oregon Legislative Assembly in 1997, this loan and grant program is capitalized by the proceeds from the sale of state revenue bonds. Environmental actions (assessment and clean up) funded by this program must be linked to redevelopment that facilitates economic development and community revitalization.

BRF was originally capitalized in 1998 with \$500,000 with an additional \$200,000 added to the fund in January 2005 (\$140,000 remains unobligated).

The \$2.6 million fund recapitalization in March 2006 is restricted to industrial sites that are redeveloped for and intended to remain in industrial use. OECDD has already received applications for funding assistance to cleanup two industrial sites. Both applications are currently undergoing financial review. One of the applications is for \$958,000 loan financing for cleanup of a 9 acre- industrial site in northeast Portland which impacts several City of Portland drinking water wells. After cleanup is completed, redevelopment of the property has the potential of adding up to 60 new jobs to the area.

The second application is for up to \$2.5 million loan financing to cleanup a privately-owned 15 acre industrial site in north Portland that is located one-half mile from Interstate 5 on Columbia Boulevard. The actual loan amount will depend upon the selected DEQ-approved cleanup plan.

Existing DEQ Tools/Resources:

- **Site Specific Assessments (SSAs)** – SSAs provide a clearer picture of what the environmental conditions are at the site. It provides the basis for clean up actions and costs. DEQ has approximately \$204,000 available for SSAs from EPA funds during 2006-07. It is anticipated this will continue. In addition DEQ will have available a total of up to \$100,000 (at sites with completed SSAs) for small amounts of clean up activity which is expected to make a site more desirable for redevelopment.

SSAs are available to public entities, non-profit/community development organizations and “quasi-public” organizations (ports). Private sector site owners must partner with a local government to apply on their behalf.

- **Prospective Purchaser Agreement (PPA)** - A PPA is a legally binding agreement between DEQ and a prospective purchaser or lessee of real property. A PPA limits the purchaser’s or lessee’s liability to DEQ for environmental cleanup of the property. The PPA does not provide protection from liability a purchaser or lessee may have under federal law or from liability for any new contamination that may occur after the purchaser or lessee acquires the property. A PPA must be negotiated with DEQ *before* the purchaser or lessee acquires an interest in the property.

PPAs are generally eligible to sites contaminated with hazardous substances, including petroleum. They are available for an individual, business, nonprofit,

governmental body, or any other entity that intends to acquire contaminated property. The prospective purchaser or lessee must not have caused or aggravated the contamination at the property, and must not have been affiliated with individuals or entities responsible for the contamination.

Substantial Public Benefit: Among other qualifying criteria, the statute requires DEQ to determine that the state will receive a **substantial public benefit** from entering into a PPA. What this means will differ from site to site, because each property presents a unique set of cleanup and redevelopment issues and opportunities. In general, a PPA will include some combination of: substantial funding for cleanup or a commitment to perform substantial cleanup; productive reuse of a vacant or abandoned industrial or commercial facility; or a development by a government entity or nonprofit organization to address an important public purpose.

- **DEQ Assistance with EPA Brownfield Grants** – DEQ will work with eligible applicants on identifying sites and preparing EPA Brownfield grant applications. EPA grants cover assessment, clean up and revolving loans. DEQ also works with successful applicants on implementation of their EPA Brownfield Grant.
- **Clean Up Program** –DEQ has recently cut the number of clean up program staff due to revenue shortfalls. This has resulted in a waiting list for review of clean up actions. Sites that are candidates for the Certified Industrial Land program bypass the waiting list and are moved to the top of the list and assigned project managers.

Proposed Tools and Resources

OECD and DEQ have submitted the following legislative concepts and budget/policy option packages for the 2007 legislative session:

- OECD insurance-pool program to aid with limiting third party liability and legal litigation costs.
- OECD Tax Incentive Program (Income Tax Credit and/or Property Tax Abatement).
- DEQ has submitted a budget/policy package that would assist in providing some additional staffing resources in the cleanup program.
- DEQ has submitted a policy package for an \$8 million bond sale for related debt service costs for cleaning up contaminated orphan sites.

Applying What We've Learned

The Port of Portland, the Portland Development Commission, the City of Portland, and METRO commissioned a study comparing development costs for brownfield and greenfield sites. Published in December 2004, the study reinforces the popularly held notion that it is “easier and cheaper” to develop greenfield sites than to redevelop brownfield sites. The study has been criticized for focusing on brownfield sites with high clean up costs. In addition, the study did not take into consideration the full cost of developing greenfield sites including the cost of fully servicing the site such as the cost of upgrading rural roads to handle increased commuter and freight traffic, the cost of potential land use actions and the increasing probability that a greenfield site may contain wetlands and the subsequent cost of mitigation.

Given what we’ve learned over the last two years, the ERT Directors should discuss which of the following actions to pursue:

- Increase funding and staffing: The path to clean up can be costly and complicated. Increased funding for brownfield assessment and cleanup at OECDD and DEQ as well as increases in staffing at DEQ to provide much needed technical assistance are critical for successful brownfield redevelopment.
- Create Incentives: Incentives appear necessary to make redevelopment of brownfield sites competitive with development of greenfield sites. Tax incentives (income tax credit and/or property tax abatement) proposed by OECDD should help us produce more substantial results.

In addition, we may want to consider establishing a pilot program to provide financial assistance in the form of rebates to eligible property owners conducting voluntary cleanups that promote economic revitalization. Idaho passed legislation in 2006 to establish a pilot cleanup rebate program. The program is funded at \$1.5 million - \$1 dollar for every Idahoan.

- Better explain liability and cleanup: ERT coordinators identified concern about liability as a significant issue in brownfield cleanup and redevelopment. As noted earlier, there is often confusion about the relationship between legal liability and cleanup, for both current owners and potential purchasers. Much of this misunderstanding arises from not having consulted with either DEQ or a knowledgeable environmental attorney. Focusing solely on the idea of liability often distracts owners and purchasers from addressing the real problem, which is that for redevelopment to occur, someone must provide the resources to address environmental issues at the site.

DEQ will create materials that explain liability for current owners and potential purchasers, and that identify tools available to address both liability and cleanup.

- Help manage third party liability: Fear of third party liability under federal law is a concern at some contaminated properties. OECDD's insurance-pool program to aid with limiting the risk of third party liability and legal litigation costs should help address those concerns and stimulate redevelopment.

For example, the state of Massachusetts contributed approximately \$5 million to its insurance pool program in 2005. This investment resulted in 251 projects, \$1.96 billion in development and 24,500 jobs.

- Target outreach and technical assistance: The term "brownfield" is industry or government jargon that continues not to be well understood at the local level. In fact some communities will swear that they don't have brownfields until you ask them about the gas station on the corner that's been abandoned for the last ten years.

Instead of asking local jurisdiction if they are interested in cleaning up brownfields, ERT coordinators and regional teams should provide more targeted outreach and technical assistance by engaging local government on specific former industrial sites and market/business opportunities.

- Provide more and better information: Prepare a list of state/federal tools and resources for brownfields clean up and assessment for use by the ERT coordinators, regional teams and local government.