

BROWNFIELD REDEVELOPMENT TASK FORCE

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“Brownfield Redevelopment - Issues & Opportunities”

The Issues:

- **Time**

Development is a lengthy process that always involves zoning, building approval, etc. and with brownfields we add environmental contamination. Investigation involved regulatory issues and intellectual process. Historically regulators represented a roadblock, but have changed to a cooperative entity to provide for successful redevelopments.

Engineering design is a young science. The [Triad Approach](#) is now used to provide a focused investigation. The regulatory approach has been expedited. Marketing is essential and a key to redevelopment. Transparency with the issues or problems, and involvement of the community is also essential.

- **Money**

Contamination raises project cost. (for remediation). But land is less costly for brownfields. There are many agencies that can assist the developer, but funding sources are fewer due to lack of knowledge in this field. Banks nationally are gaining expertise, developing underwriting specialists.). Banks can earn [CRA](#) credits by accommodating brownfield redevelopment projects through environmental lending specialists..

- **Liability**

Brownfield projects required greater reserves due to unbounded liability. That obstacle became mitigated by [environmental insurance products](#). (See TASK force meeting [presentation](#) on insurance products)

On Site Contamination Issues

Cost cap insurance provides protection by allowing the developer to purchase a product based on the estimated total cost of the remediation plus 10% which caps the total costs.

Third Party Liabilities

Protection for someone harmed on site or contaminant migrating off site.

Regulatory Liabilities

Provides protection on changes in regulations for levels of contaminants and provides protection against identification of ‘new’ contaminants.

Public Perception Issues

Overcome fear by involving the community with full transparency. Providing factual information resolves perception issues.

New Market Drivers

- **New Financial Regulations:**
 1. **Sarbanes-Oxley Law**

All current and future remediation liabilities must be disclosed.
Severe non-compliance penalties.
 2. **Accounting Pronouncements**

Rule 404 - Two audits will be required. In addition to the traditional audit, a second is required to quantify method and internal controls for producing financial statement; purpose is to prevent fraud.
All real estate requires full disclosure of environmental condition and clean-up cost. Section 606: The penalty will require the stock of the company to be de-listed. Failure to disclose this information will require 10 years in jail and \$20M in fines. FAS 143 closes loop hole-effective March 16, 2005 for publicly taxed companies. All property must have disclosure for current and all future liabilities. Requires companies to clean up-properties for reuse.
- **Increased Government Support**
 - Direct Grants & Loans
 - Tax and Zoning Incentives
- **Use of Environmental Insurance**

Brownfield Act of 2002 was first federal legislation focused on incentive to clean and redevelop these properties.
- **Improved Cleanup Technology**

TCP / TCE
- **Favorable Brownfield Economics**

Now profitable
- **Changing Public Perceptions**

Two states, New Jersey and California, use brownfields as the preferred place to site their public schools due to lower costs and land considerations.

New Realities

- **Risk Based Methods –Fast, Cost Effective Cleanups**

Clean ups are now being based on future use of property. Engineering controls focused on containing contaminant for the use determined. Deed restriction effective and now moving to environmental land use covenants.
- **Sellers & Buyers Have the Liability Protection of New Brownfields Laws**

New liability laws require maintenance of site; engineering controls, monitoring, reporting and insurance. This lowers liability and improves protection.
- **Brownfield Redevelopment Seen As Way to Rejuvenate & Revitalize Communities**

Because of environmental insurance we have new economic possibilities.

New Approaches for a New Reality

- **Site Remediation Must Be Coordinated with Redevelopment Activities**
Essential step to avoid unnecessary costs.
- **Use of 3rd Parties Post Closure Mechanisms**
If engineering and land use controls are not maintained, original owner is liable. The [Guardian Trust](#) can manage forever with one time lump sum cost to safely off-load responsibilities that ensure public safety.
- **Area-Wide Redevelopment Approach**
Communities can use Guardian Trust for protection and city will not be in chain of command
- **Emphasis on Community “Buy-In”**
Vision and community involvement leads to successful redevelopments.
- **Use of Capital Markets to Access Funding**
- Returns on real estate have gone down. What once was a 10-15% return is now 5-6%. A \$400 billion financing potential from Wall Street. Five percent of funds will go to socially responsible development.