

Briefing Paper

Impact of Brownfields on Urban Revitalization in California

Every day we witness the devastating effect that brownfields can have on a community's landscape. The very existence of these derelict properties shrouded in some toxic mystery can have a suffocating effect on the community spirit.

Every one of the estimated 90,000 brownfields in California is a missed opportunity for an affordable housing development, a public park or a commercial complex that most likely will be built elsewhere. Consequently, unrestored brownfields serve only to fuel development on our remaining open landscapes.

Redevelopment of brownfields is discouraged because of the liability risks, uncertainty and cost of cleanups, complicated and confusing regulatory requirements, difficulty obtaining project financing and the lure of agricultural and open land.

Although these regulatory and financial roadblocks are bad for all, they are particularly hurtful for low-income communities, where brownfield sites are often found in abundance. The failure to redevelop these sites translates into potentially more exposure to toxics and loss of the economic and housing benefits of appropriate redevelopment.

Moreover, it is increasingly problematic to build affordable housing units on brownfields, because of the higher cost of cleanup resulting from requirements to meet the most stringent remediation standards, because of residential exposure scenarios and; the lower potential profit as compared to mixed-use and other types of brownfields development. The net result is that affordable housing is not being built on brownfields at any significant level. Public support is needed; especially in light of strong views in many low-income urban cores about gentrification displacing long-time residents and about conflicts between urban revitalization and environmental justice goals.

Obstacles to Brownfield Redevelopment and Strategies to Remove Them

The list of reasons for why brownfield projects are avoided is long. Yet, by focusing on three essential legislative proposals state leadership could assist in fostering an efficient and economical state brownfield program:

1. Liability Concerns

Potential purchasers, developers and lenders should not be held legally liable for past environmental pollution to which they have neither contributed nor caused. At the heart of the brownfields debate is the federal Comprehensive Environmental Response and Compensation and Liability Act of 1980 (CERCLA), commonly known as "Superfund." The U.S. Congress passed the Superfund Law in response to the Love Canal situation, in which an entire neighborhood was destroyed by toxic contamination. Shortly after passage of CERCLA, most states—including California—followed suit with equivalent state cleanup laws.

The most important thing about these laws is that liability attaches to any current or past property owner (with some exceptions), regardless of who was actually responsible for contaminating a site. While they were created to address nation's most polluted sites, these laws caught in their web upwards of a half million mildly contaminated or uncontaminated sites. This caused a widespread chilling on most real estate transactions that involved even a hint of environmental contamination.

Although designed with noble goals, this law has caused unintended consequences for urban areas resulting in recyclable urban sites across the nation, with even the possibility of contamination, becoming dead zones. In lieu of comprehensive Superfund reform (which remains critical), federal and state agencies have clarified through a variety of administrative remedies that liability should not apply to truly innocent parties; this has provided some level of comfort for lenders and developers, but clear and comprehensive liability relief is still needed.

2. Complicated Regulatory Environment

Coping with the maze of laws and requirements that apply for most brownfield projects can be daunting. Cleaning up and redeveloping sites can involve a morass of vague, overlapping, and sometimes even conflicting requirements at the state, federal and local level. Jumping through these various hoops is time-consuming, and project proponents often must hire specialized lawyers and consultants simply to understand what is required.

Reducing this red tape should be a major priority for state agencies who are trying to encourage brownfield redevelopment. Due to engineering and economical feasibility, California, like many other states, no longer requires all cleanups to meet the residential-level standards. In many cases, the California Environmental Protection Agency (Cal/EPA) allows parties to tailor the degree of cleanup to the site's intended use. This type of end-use cleanup should be codified.

3. Financing Challenges

For a number of reasons, it can be difficult to secure front-end as well as long-term financing for brownfield projects. Banks are nervous about the possibility of high cleanup costs, loan defaults, and loss of collateral. Further, with the exception of larger financial institutions, most banks do not have the in-house expertise needed to properly weigh environmental risks.

Uncertainty and risk translates into a reluctance, or hesitancy, of capital providers to lend money, which inhibits redevelopment and environmental cleanup. Project proponents are often asked to take a risk that, for example, a \$500,000 investment could become a \$10 million cleanup liability.

Public/private partnerships help share this risk burden and provide the resources and cooperation to work through the many challenges. Many states have set up successful finance programs that fill the funding gaps that the private sector will not bridge. California, however, has yet to join this trend. Yet, we know that public investment in cleaning up sites can produce a ripple effect; stimulating private sector interest and investment in the community. We appreciate that the state last year enacted a state loan program for brownfield cleanups. However, brownfield sites that will become affordable housing developments, public parks or other non-economic uses cannot generate the income needed to repay loans. Therefore, funds in the form of grants should be made available for cleanups.

Despite the efforts of state agencies and the legislature, the brownfields program in California seems more like a patchwork of solutions than a multi-faceted, coordinated program that sufficiently meets the needs project proponents.

Effective Brownfield Programs in Other States

Five states leading the way with aggressive brownfield programs are: Maryland, Massachusetts, Michigan, New Jersey and Pennsylvania. These states have made a compelling economic case for state spending on brownfields—arguing that a dollar of state spending produces about 10 to 100 times more dollars in economic benefits. Success in these states is being driven by several factors:

- Having state leaders provide clear and public support for the importance of brownfields in advancing the state's quality of life and economy.

- Working to eliminate all remaining barriers to brownfield redevelopment and improving the full package of incentives, assistance, and liability reduction offered to project proponents. State actions to address liability concerns are working, but the federal liability under the Superfund statute still biases some decisions in favor of greenfield development and sprawl.
- Broadening state brownfields programs to include involvement of state planning agencies and other appropriate state and local government agencies. It is imperative to have strong involvement of state organizations besides environmental regulatory agencies.
- Ensuring the protections of public health while shifting emphasis to the broader economic development value of brownfields sites.

About the California Center for Land Recycling (CCLR or “see clear”)

CCLR is a statewide nonprofit that repairs fractured communities and discourages urban sprawl through creative private, public and nonprofit partnerships. CCLR helps those who have the biggest stake in revitalizing their neighborhoods, including community development corporations, affordable housing developers, redevelopment agencies and local governments. Our work is accomplished through training, technical assistance and small grants for communities who are attempting to turn around vacant or environmentally distressed properties, or what are more commonly known as brownfields.

CCLR was founded in 1996 as a project of the Trust for Public Land with funding from the James Irvine Foundation. Our mission is to create sustainable communities by promoting brownfield redevelopment as an alternative to sprawl.

Key Terms

LAND RECYCLING

The reuse of previously developed land and buildings. The objective of land recycling is to help ensure that the development required to meet our society’s housing and economic needs will concurrently clean up contaminated properties while stimulating reinvestment in disadvantaged communities, particularly in the urban core.

BROWNFIELD

A real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.