

Chapter 9



Above: Cincinnati-American Can Building. American Can Building, LLC, was awarded a loan from the Ohio Development Services Agency Brownfield Revolving Loan Fund to conduct remediation activities at the 2.3-acre American Can property. The completed Factory Square project includes apartments, retail, townhomes and office space. (photo: UrbanOhio)

Above Right: Columbus-AC Humko / Harrison Park. Developed as an industrial property in 1900 and then used as a vegetable oil refinery from 1920 to 2001, this property was transformed into a promising residential development called Harrison Park. A \$3 million Clean Ohio Revitalization Fund grant provided crucial money to do the necessary clean-up of the once-problematic property. (photo: Office of Redevelopment at the Ohio Development Services Agency (OR-ODSA))

BROWNFIELDS REDEVELOPMENT

Background

Why Brownfields Redevelopment?

Brownfields are properties where the expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant. It is estimated that there are more than 450,000 brownfields in the nation. In recent years, brownfields redevelopment has become a common practice in Ohio, particularly in urban communities, but brownfields exist throughout the state.

Redevelopment of brownfields can be expensive and it requires technical expertise. One of the most significant barriers to redevelopment has been the perceived or actual potential for liability associated with formerly contaminated sites. The resulting lack of redevelopment of these lands plays a negative role in our state, regional and local economies.

Clean up and redevelopment of brownfields not only reclaims vacant properties for new uses, but boosts the economy of the immediate community as a whole. It provides new jobs and can expand the tax base for the jurisdiction. Brownfield redevelopment improves and protects the environment while also reusing existing transportation and utility infrastructure. Revitalizing brownfields reduces development pressure on agricultural properties or open land that is ideal for habitat. A U.S. EPA Brownfields Program economic impact study found that

“On average, it takes seven years for public investments in brownfields redevelopment to be recouped through additional tax revenues. But it only takes two additional years for revenues to double the public investment.”

(BenDor, Metcalf, and Paich 2011)

residential property values increased by two percent to three percent, and caused an overall property value increase in a one mile radius by \$0.5 million to \$1.5 million in areas where their brownfield grants were implemented.

In recent years, several Ohio communities have become very successful with assessing, cleaning up and redeveloping brownfields, and many more communities are realizing the benefits of completing these projects. Several federal and state grant funding programs have helped communities and their development partners address these challenges for their highest priority sites. As Ohio gains more brownfields experts (legal, insurance and consulting fields, as well as regulatory agencies), brownfield redevelopments and their risks are better understood and mitigated, and this has resulted in a more integrated and diverse approach to brownfields in certain communities. In fact, some communities with experienced public-private brownfield teams are diversifying their brownfields portfolios to go beyond the traditional industrial and commercial reuses for these properties. Some of these projects have included new parks and trails, renewable energy facilities, and urban agriculture.

While many brownfields have already been addressed, thousands remain. Brownfield redevelopment must continue to be an integral land use strategy.

How does Brownfields Redevelopment relate to Balanced Growth?

When land in urban areas is not reused and redeveloped, more land is developed in rural and suburban areas, thus contributing to the loss of critical green space, agricultural lands, and to the economic and population decline in existing urban areas. These losses, as well as the failure to remediate contaminated properties that may leach contaminants into Ohio watersheds or groundwater, play a role in the water quality and the environmental conditions in our state, and also in our economic future.

How does Brownfields Redevelopment work in Ohio?

The Ohio legislature and Ohio EPA enacted and are implementing a program to encourage cleanup and reuse of brownfields sites. The program, called the Ohio Voluntary Action Program, or VAP, allows the volunteer (owner, developer, municipality, etc.) that is completing the remediation to clean up a property, under the supervision of an environmental professional certified by the Ohio EPA. When the “certified professional” certifies that the site meets the state’s standards for its intended future use, they will issue a “No Further Action” letter for Ohio EPA review. The volunteer may also seek a “covenant not to sue” from Ohio EPA promising that the State will not



Wheeling-Pittsburgh Mill in
Stuebenville, Ohio
(photo: Tony Nicholas)

pursue legal action to require additional cleanup by the volunteer at the site.

This covenant protects against civil liability to the State for any prior pollution addressed by the voluntary cleanup of the site, but it does not protect the volunteer from potential liability from third parties or the U.S. EPA. (Ohio EPA has negotiated a process with U.S. EPA, known as the VAP Memorandum of Agreement (MOA)Track, through which a volunteer may obtain protection from the U.S. EPA as well by participating in a variation of the cleanup program that requires direct supervision by Ohio EPA and includes opportunities for public participation in the process.)

Issues

- **Role of the Public Sector:** Many brownfields have no prospect of redevelopment without public support and intervention because of the environmental and financial risks and liabilities inherent in their redevelopment. Public personnel involvement and financial support for brownfields assessment and cleanups are often necessary, as private companies do not often want to spend resources and time on assessing and cleaning up properties when they can readily locate on a greenfield site. Assembly of smaller parcels into larger areas by public entities to accommodate new business needs has also been a successful approach. Many public-private partnerships have also been established in Ohio to share personnel resources and strengths toward common goals and to help facilitate redevelopment that reflects both the company and the community's priorities.
- **Encouraging Investment:** In the last decade, there have been many programs and initiatives at the federal, state, and local levels designed to encourage the redevelopment of brownfields. Unfortunately, there are more brownfields in Ohio than resources to address them and many of these programs are conditional on commitments by end users. The traditionally long period of time between assessment, secured funding and cleanup to site redevelopment has discouraged end users from committing to new investment on the site. Streamlining this process could help more end users commit to investing and locating on the site. Programs related to cleaning up the sites in advance for future end users to locate on them have been successful in Ohio.
- **Program Changes:** Ohio has established a very proactive brownfields program to help communities with the technical issues associated with brownfields as well as the financial support for assessments, cleanup, and even environmental insurance. Ohio is known nationally for its successful program, but with current shifts in funding priorities and agency involvement, the program could change in the future.

- **Brownfields in Rural Areas:** Brownfields are often considered an urban issue, but brownfields are found in most small communities and rural areas. Urban communities often have staff and established teams with brownfield expertise. Many smaller communities and rural areas do not have the personnel resources to dedicate to this issue. In many cases, economic development organizations have helped fill this void in these areas for larger, redevelopable sites. Assistance from Ohio EPA, USDA Rural Development, and other organizations helps these smaller communities address brownfields, especially for those projects that could be considered less desirable for a larger redevelopment.

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Chillicothe-Former CSXT Chillicothe Yard



*Chillicothe Transit System
(photo: Ohio Department of
Redevelopment)*

In 2003, the City of Chillicothe was awarded a Clean Ohio Revitalization Fund grant to remediate soil and groundwater on the eight acre site. The remediated site is now a community transit center, with a modern bus terminal, and a maintenance facility and equipment building.

*Top Right: Former CSXT
Chillicothe Yard Before Brownfield
Redevelopment, Chillicothe, Ohio
(photo: OR-ODSA)*

*Bottom Right: Chillicothe
Transit Center; The Former CSXT
Chillicothe Yard After Brownfield
Redevelopment, Chillicothe, Ohio
(photo: OR-ODSA)*



“Brownfields redevelopment lessens greenfields development pressures. 1 acre of redeveloped brownfield corresponds to 4.5 acres of greenfields that remain undeveloped.”

(Paull 2008)

• **Importance of Inventories:** Communities should establish and regularly update their brownfield inventories. US EPA assessment grants have funded brownfield inventories in several Ohio communities. Many other communities have completed brownfield inventories using their own resources. With limited resources, many of these inventories are not updated on a regular basis so they do not always reflect the most recent status of brownfields or the community’s priorities. Updated inventories are useful tools to identify priority sites for the next assessment or cleanup project; to consider current environmental impacts; and to help identify opportunities for new business siting, proactive land assembly, open space or urban agriculture facility planning, or new housing. It should be noted that the designation of a property as brownfield, or the addition of a site to a brownfield inventory, may create a right to appeal that designation by the property owner.

• **Need for Enforcement:** Even when existing programs help lead to the redevelopment of a brownfield, there is some concern about the ability of local governments to enforce the use associated with the cleanup standard the site attained. Some question the actual and legal longevity of deed restrictions because of potential difficulty with enforcement. Samples of covenants that may assist local government in achieving enforceable restrictions are available on the Ohio EPA Voluntary Action web site. Once a brownfield project is completed, its cleanup standard often requires a certain limited set of uses be applied to the site for the long term. Communities need to assess their ability, and appropriate mechanisms, to continue to monitor and enforce the restriction of uses to those approved for the site.

Recommendations

1. Use planning to identify areas and sites for redevelopment.
2. Facilitate the matching of sites to potential users.
3. Involve the community with brownfield redevelopment planning to ensure a common understanding of project goals, to share details on cleanup activities and protection of public health and the environment, and to incorporate citizens’ recommendations into reuse plans.
4. Seek U.S. EPA funding for inventories, assessments, as well as brownfield funding and areawide planning programs through HUD, USDA Rural Development, and other agencies. Support continuation of state funding for brownfield assessments, cleanup and project-related infrastructure improvements.

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An Example in Cuyahoga County

The Cuyahoga County Planning Commission developed its *Brownfields GIS (Geographic Information System)* as a project through its Brownfields Pilot Demonstration project. The system, begun in 1995 and updated in its current status as an internet application, was designed to promote both economic development of industrial property and to provide information to the public on the status of industrial and commercial sites. The site provides an array of environmental data which may be useful in transaction screening analyses and Phase I assessments. Economic factors and certain infrastructure attributes can also be screened through radial searches featuring demographics, census blocks, travel time, roadways, utility, and rail lines.

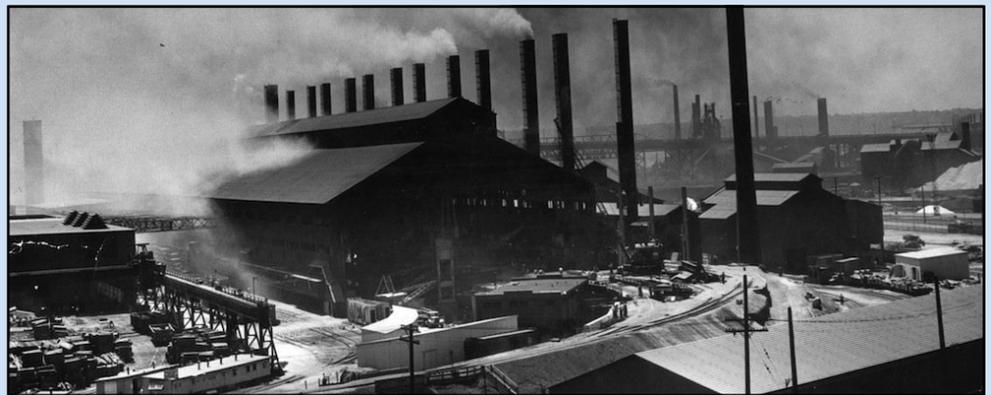
The District One Public Works Integrating Committee (DOPWIC) oversees implementation of the State Capital Improvement Program (Issue 2) in Cuyahoga County. In addition to providing financing for capital infrastructure projects, the DOPWIC evaluates and selects brownfields redevelopment projects for financial assistance.

Cuyahoga County Department of Development, Brownfield Division
<http://www.development.cuyahogacounty.us/en-US/brownfield-redevelopment.aspx>

- The County has appropriated \$17.2 million in Brownfield Redevelopment Funds for 25 projects. The Return on Investment, which is generated from income, property and sales taxes, is projected to exceed \$30 million.
- The County has provided Community Assessment Initiative funding to 45 projects.
- They offer multiple types of grants for commercial and industrial redevelopment, and brownfield prevention and site expansion.



Interior of Republic Steel Corp., circa 1930s
(photo: Western Reserve Historical Society.
CPFL Industrial collection)



Republic Steel Corp., 1949
(photo: Western Reserve Historical Society.
CPFL Industrial collection)

“Brownfields redevelopment improves neighboring property values. Properties within a mile of redeveloped brownfields will increase in value between \$.5 million and \$1.5 million. Crime in areas near redeveloped brownfield sites may also be reduced.”

(US EPA, 2012)

5. Work with the Ohio EPA Technical Assistance and Targeted Brown-field Assessment Programs.
6. Educate the public, businesses, and redevelopers about the benefits and opportunities that exist with existing programs.
7. Continue to improve systems for identification of sites and continue to update and expand inventories of sites.

Example Regulations

Brownfields redevelopment is not typically regulated at the local level. Most law and regulation in this area is at the state and federal level. More information on brownfields issues in general and on state and federal redevelopment initiatives may be obtained from the resources listed below.

Of particular note is the Ohio Revised Code 1724.10 authorizing political subdivisions (counties and municipalities) to establish Community Improvement Corporations for the purpose of “reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property.” There are special provisions and requirements that apply. See the Resources for more information.

Use of the Guidance and Example Regulations

This example guidance and/or regulations **should never be adopted without careful legal review** to assure that they are adapted to fit the authority and needs of the specific governmental body. They may need to be adapted for use by the specific type of local government and must be independently evaluated against potentially applicable federal or state law. **The law director/ solicitor, county prosecutor or other appropriate qualified legal counsel should always be consulted prior to adoption of any enforceable measures** based upon this guidance document to insure compliance and consistency with any applicable state and federal law, and to consider potential legal ramifications and liability in the implementation of the laws or rules to be adopted. Questions about the models and guidance can be directed to the Ohio Balanced Growth Program.

Resources

US EPA Brownfields and Land Revitalization; Website: <http://www.epa.gov/brownfields>

- US EPA's Brownfields Program is designed to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or containment. Through this US EPA program, technical assistance, funding, information on laws and statutes and other resources are provided. Grants are offered to leverage money for assessments, job training, clean up and revitalization.
- Through its Brownfields Assessment, Cleanup & RLF Pilots/Grants, US EPA has funded many projects in Ohio, including projects in Akron, Cleveland, Columbus, Dayton, Elyria, Fostoria, Girard, Hamilton, Lancaster, Lima, Lincoln Heights, Mahoning County, Mansfield, Reading, Sebring, Springfield, Toledo, and Youngstown. US EPA includes in its "success stories" projects in Cuyahoga County and Lima, Ohio and several Ohio projects have received the US EPA Region 5 Phoenix Awards in recognition of the cleanup activities and site redevelopment. From 1995- 2011, Region 5 has awarded 437 assessment grants that have led to completed assessments for 3,805 properties. This is more completed assessments than any other region in the US. During this same time period, 3,520 acres have been made ready for reuse.

US EPA Region 5; Website: <http://www.epa.gov/region5/superfund/brownfields/index.html>

- Includes contact information for officials involved in brownfields redevelopment throughout the region, including both local and rural areas.

Ohio EPA Voluntary Action Program; Website: <http://epa.ohio.gov/derr/volunt/volunt.aspx>

- This program was designed to provide a way to investigate possible contamination at a site, clean it up if necessary under the supervision of a certified environmental professional, and receive a promise from the State of Ohio that no more cleanup is needed. The promise, called a "covenant not to sue," protects the participant from liability to the

State of Ohio, but it does not protect against liability to third parties or US EPA. Ohio EPA has negotiated a Memorandum of Agreement with US EPA to provide a process by which a participant may derive some protection from federal liability by following a cleanup process overseen directly by Ohio EPA personnel and includes opportunities for public review of and comment on documents regarding the site. Ohio EPA also provides Technical Assistance (TA) to eligible local public entities (counties, cities, villages, townships, port authorities, etc.) to provide targeted brownfields assessments (TBA) at no cost to the entity or to advise on the VAP program. TBAs could include Phase I environmental site assessments, certified asbestos inspection of buildings, water quality stream surveys, or limited Phase II property assessment. VAPTA assistance can include guidance on technical or legal issues related to potential NFA letters or urban setting designation requests, pre-NFA document review, and reviews for the Environmental Insurance Program.

http://www.epa.ohio.gov/derr/SABR/Grant_Assistance.aspx

The Ohio Brownfield Fund; Website:

http://development.ohio.gov/cs/cs_brownfield.htm

- The Ohio Brownfield Fund is a collection of funding sources that can be used to help plan, assess, and remediate brownfields throughout the state. Brownfield redevelopment allows a community to reclaim and improve its lands, making property viable for new development. These grant programs provide funding assistance for brownfield Phase II assessments and remediation activities to address environmental obstacles and remove blighting influences. The Ohio Brownfield Fund programs have leveraged over \$10.00 of investment per grant dollar through the redevelopment of over 300 former commercial and industrial properties. The programs created over 3,200 acres of clean development ready land.

Ohio Brownfield Funding Chart

http://clean.ohio.gov/BrownfieldRevitalization/Documents/CommonBrownfieldFundingSourcesinOhio2011_000.pdf

**Ohio Environmental Protection Agency, Division of
Emergency and Remedial Response and Revitalization; Tel:**
614-644-2924; Website: [http://www.epa.state.oh.us/derr/
EnvironmentalResponseandRevitalization.aspx](http://www.epa.state.oh.us/derr/EnvironmentalResponseandRevitalization.aspx)

County Land Banks

Community Improvement Corporations for the purpose of reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property, otherwise known as County Land Banks or Community Revitalization Corporations, may be established under Ohio Revised Code 1724.10. Acting as separate legal entities, land banks can be useful in the implementation of Brownfields and other redevelopment projects, as they have the staff, budgets, and authority to actively acquire land and property, and dispose of it for productive purposes. Many counties in the State of Ohio have now established countywide land banks, which also contract with municipalities for administration of vacant property programs. For an excellent summary of the purpose and benefit of county land banks, see the Federal Reserve Bank of Cleveland's Policy Discussion Paper, "*Understanding Ohio's Land Bank Legislation*", by Thomas J. Fitzpatrick IV: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1316971

*Steelyard Commons, Tremont
Neighborhood in Cleveland, Ohio
(photo: Brian Ulrich)*

For additional references cited, see the Bibliography in the Appendix, <http://balancedgrowth.ohio.gov/BestLocalLandUsePractices/BestLocalLandUsePracticeChapters.aspx>

