Brownfields: Making Programs Work for Michigan Communities

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Introduction

In the last 50 years, suburban sprawl contributed to the destabilization of core cities. New highways, low-cost mortgages, and a long list of documented factors pushed some residents and businesses out of Michigan's industrial cities, leaving behind vacant factories, warehouses and lots, including tax-delinquent and contaminated parcels.[1,2,3] For thirty years, governments have attempted to reverse trends and stimulate local development using their powers and resources, providing incentives to investors, developers, and industries. Core cities realize that incentives are necessary to overcome greenfield competition, and that developers respond if incentives create acceptable risk/reward balances. Available strategies include grants, low-interest loans, loan guarantees, second-position loans, secondary mortgage markets, loan insurance, tax deductions, tax abatements, tax credits, land assembly, land write-downs, land leases, and transfer of property rights.[4]

Brownfields

The Resource Conservation and Recovery Act of the 1970s was the first attempt to regulate waste-disposal. Property owners were held liable for site contamination and were responsible for cleanup. The federal Comprehensive Environmental Response Compensation Liability Act (CERCLA) of 1980 identified and remediated contaminated sites that posed a significant health threat. Cleanup requirements remained at residential standards, with owners responsible for cleanup. Strict liability provisions discouraged private redevelopment. But, changes in 1996 stimulated lenders to invest in contaminated properties. Along with federal changes, many states developed their own statues.

Although most state statues followed CERCLA, some formulated a different approach. Michigan is nationally recognized for its innovative brownfield programs, and key has been a change in liability designation. Michigan's 1995 Environmental Response Act releases new owners from liability for prior contamination if they perform a baseline environmental assessment (BEA), clean up adequately for the future use of the site, and meet "due-care" requirements for managing remaining contaminants.

Direct public intervention in brownfield cleanup has been reduced. Sites are now cleaned up by the private sector using several public incentives. The 1996 Brownfield Redevelopment Financing Act (BRFA) allows municipalities to capture and use state and local property taxes from a contaminated property to cover clean-up costs. PA 382 offers a credit against Michigan's business tax for redevelopment costs. In 1998, Michigan issued bonds to support clean-up with grants and loans to eligible governments, and in 2000, Michigan expanded financial benefits to functionally obsolete properties within qualified local governments.

Michigan is nationally recognized for its innovative brownfield programs.

Evaluating Michigan brownfield programs became the interest of scholars only recently. Previous efforts concentrated on assessing specific programs, such as the implementation and use of tax abatements[5] and whether the BEA Program[6,7] and Site Assessment Fund[8] have stimulated private investment. Previous efforts analyzed citizens' support for Michigan brownfield redevelopment policies[9] and the shift of environmental programs toward economic development.[10]

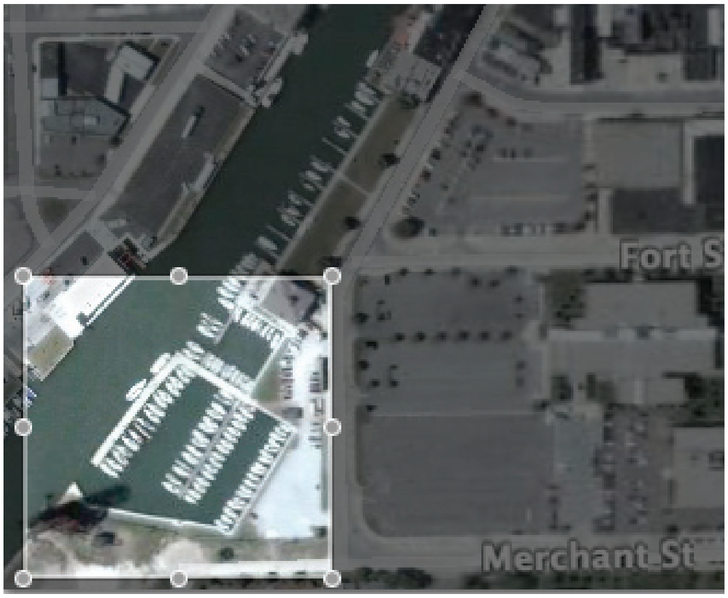
While some have attempted to evaluate general incentive programs,[11,12] few examined the preference of developers and property owners for brownfield redevelopment incentives.[13,14,15] Other research attempted to identify criteria for assessing the viability of local brownfield redevelopment programs,[16] but no studies were conducted in Michigan.

In the fall of 2007, the authors of this paper evaluated research into the Michigan Brownfield Program. The methodology for this study had three components: (1) analysis of the literature, (2) accumulation and coordination of existing Michigan data, and (3) in-depth interviews with twenty local community and state leaders. The purpose of this white paper is not to report the details of the research results, but to glean from those results future policy directions.

Results

In brief, nearly every interested party sees the Michigan brownfield effort as essential to the state's future, and perceives the Michigan program as having an impact worthy of the resources invested. Key to this success is the program's attack on both the risk and the reward side of the developer/investor risk/reward equation. The "lynch pin" is limiting liability through

Figure 1. 100-Block Clyde Street & Clyde Street Parking Lot, Port Huron, MI.



Redeveloped: 2.39 acres

Source: Mohamed, & Dancik (2007)

the baseline environmental assessment process and reducing redevelopment costs by allowing cleanup to standards befitting future use. Communities appreciate the SBT/MBT tax credit, the BRFA tax increment financing program, and the Clean Michigan Incentive grants, but perceive these as just another set of economic development tools. Surprisingly, they are often a minor part of many brownfield projects.

> ***Nearly every interested party sees the Michigan brownfield effort as essential to the state's future.***

The sites being redeveloped are not the most contaminated, but the ones most in demand by developers, such as those near waterfronts, on the fringe of viable downtowns, adjacent to major universities, or other high value locations. In terms of the number of projects, industrial redevelopment ranks low. The risk/reward gap can only be closed in situations where developers perceive future rewards to be large. Fringe industrial sites seldom offer that calculus.

Discussion

Small, Easy Changes

1. Enforceable Due Care Plans. Limiting developer liability through baseline environmental assessments is key to getting the risk/reward ratio into balance, and the concept of due care plans is a counter-balance, ensuring that environmental goals are met. But many, including Brownfield Redevelopment Authority directors and state officials, have concerns about the enforcement of due care plans. With so many jurisdictions involved in a single project, and with complex and changing ownership of such projects, some fear that monitoring and enforcement of due care plans might be lax. To prevent this, some mechanism to both staff and finance governmental oversight are suggested. One approach is to have the flexibility and mandate for communities to escrow monies to cover future follow-up inspections and reports. These funds might come from, and be a legitimate cost of BRFA recapture or Clean Michigan loans.

2. Land Acquisition. Successful community-wide redevelopment often requires generating momentum in a particular block, street, or neighborhood, so developers perceive the opportunity for future rewards. To establish a critical mass in an area, communities need the ability to purchase and control land parcels. Most community general funds do not have flexibility for this activity. Allowing flexibility in the use of BRFA tax increment capture to acquire adjacent parcels could magnify project benefits.

3. Program Evaluation. The Michigan brownfield program needs more evaluative research to know which strategies are working. Currently, program data is scattered between several agencies, and neither state nor local staff have time to evaluate projects or programs. Standardized evaluation templates with mandatory follow-up might be a solution, with funding for evaluation to come from flexibility in the use of tax increment financing (TIF) capture or a small part of the grants and loans themselves.

4. Training for Local Officials. Clearly, active communities have redevelopment champions, entrepreneurial leaders who seek out and ride herd on complex projects, sometimes for years, to bring them to fruition. The research suggests that this may be the most important factor separating active communities from less active ones. Whether such champions can be trained is questionable, but clearly, training agents should be doing more than instructing local leaders on the rules and procedures of financing programs. Training should include such things as internships, mentoring, study of best practices and cases, evaluative research, and community short-term job swapping.

Big Policy Shifts

1. Utilizing Private Capital and Market Forces. Brownfield redevelopment needs to continue, from the perspectives of both public health and core cities redevelopment. Yet, for both political and economic reasons, public funding is becoming less available. While arguing for continued public support, bold new directions must be created that promote brownfield redevelopment by the private sector. This means creating situations where private capital is induced to flow to projects and programs redeveloping brownfield sites.

Critical to the private capital intermediary process is matching the risks investors take with the rewards associated with investment.[11] Brownfield redevelopment carries additional risks resulting from (1) the liability associated with contaminated property; (2) the additional costs involved in cleanup, demolition, infrastructure updating, and site preparation; (3) additional construction and development costs; and (4) market risks derived from promoting developments in declining areas. The rewards may be great in some situations, such as obtaining uniquely attractive waterfront sites, central locations linked to transportation hubs, or property adjacent to universities. The key is therefore maximizing those rewards for private developers and reducing their risks, while minimizing public outlays.

To accomplish this, governments must utilize their powers in innovative ways. Some of these are non-financial approaches, while others employ off-budget financial powers. One non-financial example of risk reduction is the limiting of liability through a fully implemented BEA/due care process as described above. Another is government's ability to own, assemble, and prepare land, while a third is government's control over public infrastructure. On the financial side is the use of government's authority to lubricate the financial intermediary system by facilitating the creation of appropriate institutions and sharing some of the risk.

Brownfield redevelopment needs to continue, yet public funding is becoming less available.

2. Mezzanine Finance. For reasons that are not totally understood, the financial intermediary process in the middle range of the risk/reward spectrum is not well served. Risk-averse savers prefer to put their wealth into conservative banks. In order to protect those deposits, banks act out their conservative role. Because of the risks and costs involved, traditional bank financing would seldom satisfy all of the financing needs of a brownfield project.

Venture capitalists provide very high-risk capital, generally to technology-intensive firms with the promise of several hundred percent return on investment. While high-tech firms may occasionally locate in redevelopment projects, this kind of financing is seldom relevant to physical redevelopment.[17]

The large middle of the risk/reward spectrum, where nearly all brownfield projects reside, includes everything between conventional bank financing and venture capital. Private institutions are poorly developed to deal with medium-risk clients. Government does a poor job of sharing risk or institutionalizing risk-sharing mechanisms in the medium-risk area the way it does for conventional banking. Institutions similar to the FDIC and the FSLIC are generally not available in the middle realm.[18]

Some mezzanine financing has grown naturally. Seed capitalists have developed innovative, ad hoc mechanisms for extracting greater benefit from a deal to compensate for the greater risk. These methods include higher interest rates, equity, and royalty kickers. Yet, no broad-based and sophisticated intermediary system exists without government playing at least two important roles: (1) legitimizing an institutional structure, and (2) sharing some of the risk.[19] These roles are critical to inducing private capital to flow to brownfield projects. The purpose should be to perfect intermediary markets so as to channel funds to businesses at appropriate times and in appropriate amounts.

Methods for providing mid-risk debt capital include direct government loans, revolving loan funds, loan guarantees, subordinated loans, revenue bonds, loan insurance, bond insurance, secondary money markets, and loans with equity or royalty features.[11]

3. Government grants and loans. Obviously, governments can give grants to projects to reduce the cost of cleanup. The EPA has provided site assessment and cleanup grants, and the Clean Michigan Initiative (CMI) has allocated grant money to sites with redevelopment promise. These grant funds are nearing exhaustion, so the loan program is becoming more popular. Research has indicated that a high percentage of CMI sites have been redeveloped to some degree.[8]

Grant and loan programs are not designed to directly attract private investment capital. If their use reduces costs and risks, private capital might be indirectly induced to finance other project components. Yet, direct grant and loan programs are often weak in leveraging private dollars. One can never be sure whether the project might have succeeded with a smaller government provision of capital. Also, although the CMI fund comes from a state bond issue, the ultimate responsibility for repaying those bonds is the state taxpayer.

One method to directly leverage private capital is to provide only second-position loans. If private lenders are willing to cover 50% of project costs, the CMI might cover 40%, giving the private lender senior position. By improving loan-to-value ratios, this reduces risk and attracts greater private capital to a project. Lenders should also be allowed to have equity or royalty kickers to help to compensate for the higher risk.

4. Loan guarantees. We can also leverage private capital by using state bond issue funds to guarantee private loans. Given the size of many brownfield projects, this might mean guaranteeing a bond issue or buying bond insurance rather than guaranteeing a conventional loan. Lenders would be more willing to provide debt capital if some portion of the debt were guaranteed. The taxpayer

Table 1: Distribution of Bank/Borrower Fee, as a Percent of the Loan Amount in a Typical Year

Fee Per Cent	Total Loans	Larger Businesses	Smaller Businesses
7%	107	6	101
6%	112	7	105
5%	480	49	431
4%	998	120	878
3%	3656	560	3096

Source: Hamlin (1998)

would only pay the bill if a borrower failed to repay and collateral did not cover the outstanding balances.

Yet, for government to provide direct or subsidized loans or to guarantee loans for higher risk projects has inherent problems. Since the government is directly at risk, it must often duplicate the private lender's financial analysis, and the quality of that financial analysis is a concern, since governments might not be sufficiently objective for proper due diligence. Governments often do not have the expertise to assess (1) the potential of the project, (2) whether the terms of the loan are appropriate for the risk, and (3) whether terms and conditions are in line with the prevailing market. How much of the loan should be guaranteed and how risky should approved loans be? If the loan analysis is too restrictive, many projects would be rejected, defeating the purpose, but if too lenient, too much of the taxpayer funds might be lost.

Moreover, government intervention might distort money markets. Loans and loan guarantee programs might make higher risk borrowing too easy. They might upset the risk/reward balance, inducing borrowers and lenders to go too deeply into debt, hurting borrowers more than it helps, and could create unfair competition for unsubsidized businesses. Additionally, if bureaucrats are too anxious to provide funds, those funds might crowd out private capital, as developers pursue alternate sources less vigorously.

We can also leverage private capital by using state bond issue funds to guarantee private loans.

5. Loan Insurance Pooling and Capital Access Programs. One approach to promoting medium-risk/reward financing is loan insurance. Loan insurance programs are less invasive and direct than loan guarantees and more guided by market forces. Like all insurance, loan insurance spreads risk among many clients and reduces the cost to each, while providing some protection for all. A loan insurance fund is use to cover a lender's loses resulting from a non-performing loan. With insurance backing, they can lend to higher risk borrowers. The pool is funded through fees provided by participating higher risk borrowers.

Unlike a loan guarantee, the pool does not just cover the loan in question, but a portfolio of loans that each made similar deposits. The fee level for the purchase of insurance must be in balance with the level of risk created by the loans. A slight excess in inflow would allow the fund to build up over time.

Governments interested in promoting capital flows to medium-risk projects can use loan insurance with little cost to the taxpayer, and little government oversight of lender activity. Programs that do these things are called Capital Access Programs (CAP), a name given to a government-sponsored loan insurance concept invented in Michigan in 1986. Its use has now spread to many other states.[19] Michigan suspended its program in 2002, but restarted it in 2006.[20] Michigan does not target brownfield or inner city projects, though other states have targeted incentives to specific kinds of projects, such as brownfields.[21]

If a lender participates, it sets up a special loss-reserve fund to cover future losses from a portfolio of participating loans. Although the fund is officially owned by the state, lenders control it. A developer needing a loan goes directly to a lender. If lenders find too many risk factors, including brownfield issues, they might offer a loan with conventional terms and conditions, but with the additional requirement that the borrower make a nonrefundable deposit to the loan loss reserve of 1.5% to 3.5% of the loan amount.[18]

The lender matches the borrower's deposit.[22] States then typically match private contributions dollar-for-dollar, with many states increasing their matching ratio for target areas, such as brownfield sites. If the project were to be a Michigan brownfield site, for example, the CMI could provide an additional deposit as an incentive to both the lender and the borrower to utilize brownfields. Public leverage of private funding is as high as 33:1.

Government deposits are not expenditures and are at minimal risk. If any loan in the portfolio stops performing, the lender implements the normal recovery process and pursues all available remedies, including foreclosure and collateral confiscation. If the lender ultimately loses money on the loan, it has the right to charge

One approach to promoting medium-risk/reward financing is loan insurance.

that loss against the insurance pool. The collection and claims process is designed to work in a routine way.[23] The pool builds up in layers, with the government's deposits at the bottom, the lender's contribution in the middle, and deposits from borrowers on top. If the pool must cover a bad loan, all previous borrower contributions to the pool are first to be used. Government contributions are the most secure.

If the lender operates prudently, the pool builds up, increasing protection against future losses and providing lenders with greater cover for these riskier loans.[24] But, while reserves enables a lender to be more aggressive, lender net worth would still be at risk if loss rates exceed the insurance coverage . Thus, a built-in incentive causes lenders to be prudent, eliminating government's need to review loan decisions.[25]

Flexibility is key, and market mechanisms are allowed to work. Lenders decide what types of loans to make, as well as interest rates, fees, terms of maturity, collateral requirements, and other conditions. Loans can be short- or long-term, fixed or variable rate, secured or unsecured, first or second position, amortizing or ballooned, and term or lines of credit. The lender can also recast the loan, extend the term, amend covenants, release collateral, or work with the borrower in a variety normal ways.[18]

Because of the reserve fee, a CAP loan is likely to be more expensive to the borrower than a conventional bank loan. Thus, borrowers that are not higher risk are better off with conventional terms. Theoretically, competition within the lending industry steers such borrowers to conventional financing, reducing the risk that the government program will be used excessively or crowd out private capital.

While CAP is often called a small business program, loans can be of any size under many state programs.

Recommendations

Several suggested policies explained in this report are as follows:

1. Michigan should continue to have a strong brownfield program. Both the environmental and economic objectives of the brownfield program are critical to the state's future. The private sector will not redevelop without incentives, but brownfields are in critical areas.

2. Environmental goals should not be lost. Long-term implementation of Due Care Plans should be monitored.

3. Greater flexibility should be provided for the use of BRFA TIF capture, including some administrative costs and purchase of adjacent land.

4. The Michigan brownfield program needs more evaluation to know which strategies are working. Currently, program data is scattered between several agencies, and neither state nor local staff have the time to evaluate projects or programs.

5. Clearly, active communities have entrepreneurial leaders who seek out and ride herd on complex projects, sometimes for years. To spread this skill, training should include internships, mentoring, study of best practices and cases, evaluative research and community short-term job swapping.

6. Michigan should look for ways to induce private action with minimal expenditure of taxpayer funds and greater utilization of market forces through risk/reward balance. While the task is important enough and has a high enough benefit to command public dollars, budget and political realities make it necessary to seek the maximum private leverage for every public dollar.

Michigan should look for ways to induce private action with minimal expenditure of taxpayer funds.

Notes

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The **Urban Core Mayors** is a bipartisan, multi-regional group established in 1992 to work together for local and state solutions to common problems facing Michigan's core cities. Urban Core Mayors members include the Mayors of Ann Arbor, Battle Creek, Bay City, Dearborn, Detroit, Flint, Grand Rapids, Jackson, Kalamazoo, Lansing, Muskegon, Pontiac, and Saginaw.

The **Bipartisan Urban Caucus** is a bicameral, bipartisan network of legislators, established in 1995 by legislators seeking to develop a state policy agenda to support the revitalization of Michigan's core cities.

The **Center for Community and Economic Development** is a Lansing-based unit of Michigan State University's Office of University Outreach and Engagement. Established in 1969 to initiate and support innovative problem-solving strategies to improve the quality of life in distressed communities throughout Michigan, CCED provides a multidisciplinary capacity to respond to the complex, interrelated issues of communities. In fulfilling its mission to engage university resources in support of Michigan communities, CCED has provided assistance and information to the Urban Core Mayors since 1993. For more information visit http://www.ced.msu.edu/

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