

INVENTING THE BROWNFIELDS LAND BANK

Could a Brownfields Land Bank Be Matched with Revved Up TIF Authority to Create a New Brownfields Tool and Lure Manufacturing Back to Former Industrial Sites?

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Synopsis

Many communities are making brownfields redevelopment a priority in order to maximize the many benefits of accommodating growth in existing communities. Many communities have also established land banks to manage and dispose of vacant property. However, the promotion of brownfields redevelopment through a land bank mechanism is almost completely unexplored territory. As the federal government attempts to change the tax structure to favor “re-shoring” (attracting manufacturing back to the US), communities that have made their brownfield sites development-ready might be rewarded with economic growth that fits sustainability objectives like a glove – re-using former industrial sites for newly attracted manufacturing and corporate operations. A brownfields land bank might be just the mechanism to accomplish this. This article outlines some best practices in creation of development-ready land from a brownfields inventory; then recommends the use of tax increment financing, albeit modified for the somewhat peculiar case of a brownfields land bank, to get the ball rolling. There is considerable potential for a brownfields land bank to be a key long term economic redevelopment mechanism if it is endowed with a mix of tools that are derived from best practices from both vacant land banks and redevelopment authorities.

Why Consider a Brownfields Land Bank?

Our client (a local government) had a challenging problem: a large inventory of contaminated industrial land, most of which is planned to stay industrial, and most of which is in or near a negative value situation, with little private development interest. The team of consultants, led by Maul-Foster-Alongi and assisted by Redevelopment Economics and Eco-Northwest, was charged with developing policy recommendations to address the city’s long-term needs to accommodate industrial growth, making maximum use of this inventory of under-utilized brownfield sites.

In separate studies, the community had already defined a need and demand for industrial expansion and had identified the substantial inventory of brownfields as the best place to locate the projected growth. The problem was that most of these sites were drawing little attention from prospective users and developers, at least not the users and developers that the locality wanted to see. The sites were only attracting interest from “bottom-feeders,” such as automobile salvage yards, trailer storage, and other unattractive or unproductive uses.

“Re-Shoring” and a Brownfields Land Bank

Communities would be wise to start thinking opportunistically about the possibility that federal incentives will begin to shift toward “re-shoring” — attracting manufacturing back to the US. Forward-looking communities that have made their brownfield sites “development-ready,” could be rewarded with employment-intensive manufacturing or other corporate relocations.

Further, some sites were held by entities that were essentially mothballing, i.e. holding the properties without marketing or availability for new uses.

The team evaluated a series of gap-financing options, including a brownfields loan pool, a brownfields tax credit, tax abatement, enhanced use of tax increment financing, and creation of a new brownfields financing mechanism funded through a dedicated revenue source. Using pro forma analysis, each tool was then tested for its ability to fill gaps, overcome hurdles, and produce the desired redevelopment.

As might be expected, the gap financing incentives produced some good results in mixed use and downtown areas, but many of the industrial-to-industrial properties stayed either in the red or with low rates of return, insufficient to expect new investment.

This led the team to consider an institutional capacity building change, in addition to enhanced incentives: the possible creation of a brownfields land bank that would acquire, manage, cleanup, and reposition brownfields to accommodate industrial job growth.

The team discovered that there is little in the way of precedent for this concept. Therefore the team conceptualized the brownfields land bank as a hybrid: part vacant property land bank, with a commitment to management of vacant property and patiently planning ultimate reuse; and part redevelopment authority, with aggressive use of acquisition and redevelopment financing tools. Table 1 is a somewhat simplified illustration of the manner in which a brownfields land bank might steal some concepts from both vacant property land banks and redevelopment authorities.

Comparison Chart - Vacant property land bank, brownfields land bank, and redevelopment authorities. Highlights (light purple) indicate areas in common.

	Vacant Property Land Bank	Brownfields Land Bank	Redevelopment Authority
<i>How property comes under purview</i>	Mostly tax foreclosure	Strategic acquisition; some tax foreclosure	Strategic acquisition; some tax foreclosure
<i>Short-term vs. long-term perspective</i>	Long-term	Long-term	Short-and-medium term
<i>Management of vacant property</i>	Necessary part of long-term perspective	Necessary part of long-term perspective	Property management becomes necessary when redevelopment fails
<i>Land use</i>	Primarily residential	Primarily commercial/industrial	Primarily commercial/industrial
<i>Redevelopment financing tools</i>	Usually residential tools – CDBG, affordable housing funds, TIF, New Markets	Primarily TIF, historic tax credits, New Markets, infrastructure funding, brownfields	Primarily TIF, historic tax credits, New Markets, infrastructure funding
<i>Isolated Sites vs. Area Redevelopment</i>	Mostly isolated sites	Mostly isolated sites	Mostly area redevelopment

A brownfields land bank would function to acquire contaminated and vacant/under-utilized industrial property for the purposes of sustainable long-term economic development. The primary orientation would be to create development-ready land, while “holding out” for uses that serve the long-term economic interests of the community. Making land “development ready” might involve cleanup, regulatory clearance, demolition of out-moded structures, infrastructure improvements, clearing title, and securing appropriate zoning and community buy-in. In some cases, site assembly with adjoining parcels would be the key to creating a unified and marketable industrial or business park. The tools that would be used to achieve this would be borrowed from best practices in the spheres of both vacant land banks and redevelopment authorities, which leads to the discussion that follows. A common theme is that tax increment financing (TIF) can be the key to success, but must be molded to the peculiar circumstances of a brownfields land bank.

Vacant Property Land Banks and Brownfields

Most land banks are geared to the larger inventory of vacant property, most of which is residential and comes to the land bank through tax foreclosure. The Brownfields 2011 conference featured a session on brownfields and land banking, but most of the material dealt with vacant residential property, while citing a few commercial applications.¹ The Fulton County panelist indicated that they do not acquire brownfields due to: “concern about liability; board... policy; and low historical demand.” No industrial projects were cited. The only land bank that has an industrial and brownfields focus is the Cleveland Industrial-Commercial Land Bank.

Cleveland Industrial-Commercial Land Bank – The [Cleveland Industrial-Commercial Land Bank](#) may be the only current example of a land bank that is geared to re-positioning brownfields and industrial-commercial property. The Land Bank, established in 2005, represents “a proactive approach to reusing properties with serious real estate obstacles, such as environmental contamination and/or economic hardships. This Land Bank provides the opportunity for the City to strategically assemble properties to attract businesses and create long-term economic and community investments.”²



Cleveland's Health Tech Corridor -- strategic Land Bank acquisitions might help lure a data center.

¹ Brownfields 2011 session, “Banking on Abandoned Properties,” available at: <http://www.brownfieldsconference.org/en/Session/1920?returnurl=%2fen%2fsessionspast>

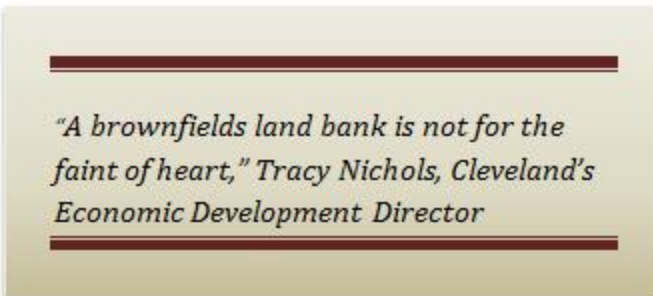
² Cleveland Industrial Commercial Land Bank website: <http://www.city.cleveland.oh.us/portal/page/portal/CityofCleveland/Home/Government/CityAgencies/EconomicDevelopment/Brownfield/Industrial-Commercial-Landbank>

According to Tracey Nichols, Cleveland's Economic Development Director,³ the Land Bank has acquired 11 properties, totaling 125 acres. Two have been sold and redeveloped – Garrett Square (retail with 170 employees) and [Green City Growers](#) (greenhouse with 30 employees). Another is under option for a data center projected to employ 40 persons on a portion of a 10-acre site, acquired because of its proximity to the City's [Health Tech Corridor](#). Of the remaining Land Bank sites, three are being marketed after gaining environmental clearance; and five are in the cleanup and site prep phase. The acquisitions are a mix of proactive/voluntary acquisitions and tax foreclosures.

Ms. Nichols cited UDAG Repayments, HUD 108, Clean Ohio, City Economic Development Funds and land sales proceeds (rank ordered) as the primary public financing sources. When using HUD 108 loan funds, the City uses an unusual TIF structure where the TIF can be used as a debt reserve, and if not needed for the debt service, can be used for new projects, thus enabling completed projects to seed new projects. In addition, when the City undertakes land bank clean-up projects, they have utilized Pollution Legal Liability insurance products to safeguard against costs created when a previously unknown remediation need is detected. The City has collected under these policies twice.

Cleveland's program benefits from a far-sighted element of the Clean Ohio bond issue: in 2009 the program was split into two components: an "end use known" track; and a "development-ready land track." The split enabled state financial assistance to Land Bank sites that otherwise might have scored poorly when ranked against known redevelopment plans. The City's aggressive use of HUD 108 loans to finance acquisition, cleanup, and redevelopment is another distinguishing feature.

In terms of lessons learned, Ms. Nichols said the Land Bank is now more strategic and selective about the properties it acquires, both with reference to cleanup liabilities and with reference to market and access characteristics. The jury is still out on whether the Land Bank will succeed with industrial growth.



"A brownfields land bank is not for the faint of heart," Tracy Nichols, Cleveland's Economic Development Director

Genesee County, (Flint) Michigan – The Genesee County Land Bank is an example of a vacant land bank that sometimes addresses brownfields but the primary orientation is vacant residential property. The County was able to bring their rampant property abandonment problem under control through:

- Expedited foreclosure process;
- Disposition of properties according to a plan instead of a mechanical bidding process;
- Elimination of tax liens;
- Use of tax increment financing to enable cross-collateralization.

³ Personal communications, Tracey Nichols with the Evans Paull, Jan. 17 – 22, 2013.

The use of TIF for cross-collateralization has been generally regarded as the key to success. Michigan passed land bank legislation that: 1) defined any property in a land bank as a “brownfield,” 2) allowed scattered site (non-contiguous) TIFs for land banks; 3) allowed land bank-owned properties to use “0” as the base for measuring the tax increment. These three reforms meant that all land bank properties were eligible for TIF, and created a fairly ideal match for land banks to make maximum use of TIF. The County then issued TIF debt based on projected revenues from putting properties back on the tax rolls. As many as 4,000 mostly non-contiguous properties were batched into these TIF plans. This set the stage for stronger ready-for-redevelopment sites to generate tax revenue to cross subsidize sites that needed more upfront investment (often demolition) in order to create economically viable sites.



Durant Hotel, now converted to 93 apartments, was rescued by the Genesee County Land Bank.
Photo courtesy Michigan Building and Construction Trades Council

The land bank has successfully addressed several distressed commercial sites, such as the Durant Hotel (pictured at right), and has been able to re-position them for reuse using TIF, as well as other gap-financing tools. The Land Bank addresses more significant brownfield properties through collaboration with the Genesee County Brownfield Redevelopment Authority (see discussion of Michigan’s Brownfields Redevelopment Authorities, below).

The take-aways are:

- Vacant land banks are currently not ideally equipped to address significantly contaminated industrial property – both their tools and staff expertise fall short of what is needed to proactively address brownfields;
- TIF can match up well as a land bank tool, but state TIF enabling legislation must allow inclusion of non-contiguous properties and must not be limited to urban renewal areas and urban renewal plans.

Redevelopment Authorities and Brownfields

Of course, many redevelopment authorities include promoting brownfields redevelopment in their mission, but most are involved in project-driven gap-financing, not necessarily the longer term perspective of creating development-ready land. Most development authorities lack the tools to be aggressive about brownfields acquisition and redevelopment, particularly if a longer term perspective is needed, which is usually the case in industrial development. Below, we will summarize two programs that might be considered in the category of best practices for addressing brownfields with the long-term perspective.

St. Paul Port Authority – The Saint Paul Port Authority (SPPA) has played a lead role in acquiring, remediating, and redeveloping brownfield properties for at least two decades. SPPA is fairly unique among redevelopment authorities, because: 1) it regards industrial and technology jobs (not mixed use, commercial, or residential) as its core mission; 2) it uses acquisition and land write-down as a primary rather than a last-resort tool; 3) *all* of its redevelopment projects are brownfield sites; and 4) most SPPA projects are driven by the longer-term perspective of creating development-ready land, rather than to accommodate specific proposed uses. That makes SPPA a close second to the Cleveland Industrial-Commercial Land Bank as a precedent (and laboratory) for the concept of a brownfields land bank.

SPPA currently controls 17 business centers/industrial parks (13 complete and 4 currently under development) in Saint Paul, all of which resulted from acquisition of brownfield sites. Completed projects house 526 businesses that employ over 17,000 persons. The Port Authority ranks TIF as their most frequently used incentive, followed by New Market Tax Credits, revenues derived from past projects, HUD 108, and other federal and state sources. The tools used to implement this successful acquisition-redevelopment program include several distinguishing elements which might be considered by others that might look to replicate the successes:



Energy Park – one of the early SPPA acquisitions involved redevelopment of a Superfund site and resulted in attracting/retaining 22 businesses that now employ 4,200 persons.

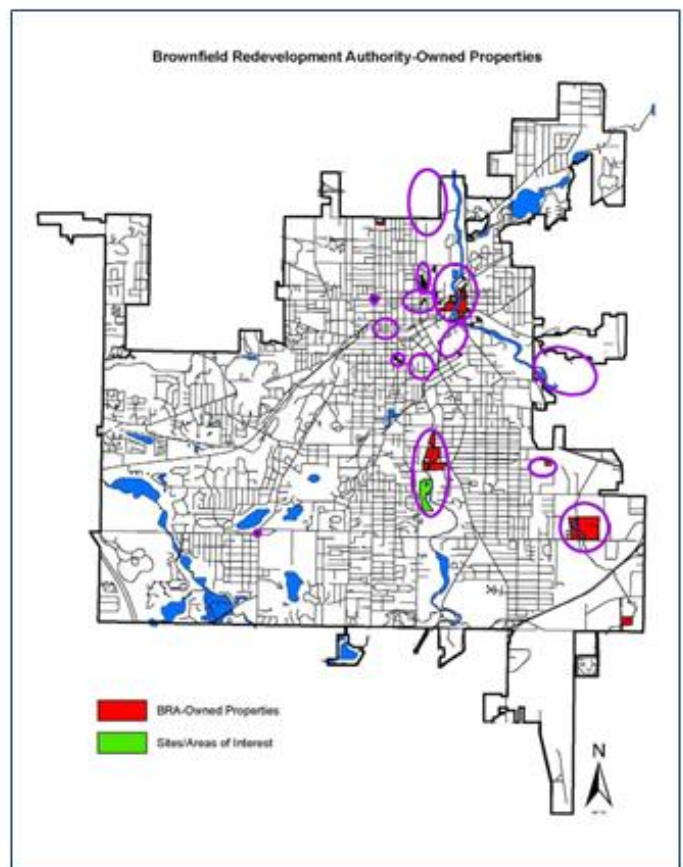
- SPPA extensively uses land-write-down as a business incentive, often selling land for \$1.00. The land write down assists businesses in complying with a St. Paul’s extensive public benefit requirements.
- TIF is the largest dollar volume subsidy source and was strengthened in 2010 when the Minnesota legislature allowed “pooling,” which means that funds generated by a mature district can cross-subsidize a start-up district;
- SPPA is a designated Community Development Entity (CDE) under New Markets Tax Credits (NMTC) and several of their projects have been aided by NMTC.
- SPPA minimizes contamination-related risk by always performing a Phase I, Phase II, and RAP before taking possession. SPPA gains liability protection under Minnesota’s “No Association” determination. Additionally, Minnesota law allows site access if the property is being acquired under eminent domain – this allows SPPA to perform site assessments before purchase even if there is not a willing seller. However, eminent domain is now rarely used; so deals usually require a willing seller.

Michigan Brownfields Redevelopment Authorities – Michigan’s Brownfields Redevelopment Authorities (BRA’s) provide a well-formed vehicle to stimulate brownfields investments in a state where brownfields redevelopment is almost synonymous with economic development. The predominant use of the BRA TIF authority has been project-specific gap-financing; however, there are some instructive examples of brownfields redevelopment with the longer-term perspective typical of a land bank.

First, a little history: Michigan clamped down on local tax increment financing in the early 1990’s, but then created new enabling legislation for BRA’s in 1996. The new TIF authority specifically captured taxes to pay for site assessment and cleanup. In 2000 the state legislature broadened the definition of eligible property to include “functionally obsolete or blighted” land; they also broadened the eligible uses of funds to include acquisition, infrastructure, demolition, lead and asbestos abatement, and site preparation. A just passed 2012 amendment broadened the program still further to include historic preservation and private parking garages as eligible uses of funds. In this fashion Michigan’s “Brownfields Redevelopment Authorities” evolved to accomplish broader redevelopment objectives under the brownfields umbrella.⁴

Kalamazoo Strategically and Aggressively Acquires Brownfields. One of the cities that have aggressively used the BRA authority for land banking and “development-ready land” purposes is Kalamazoo. Kalamazoo has used the BRA vehicle to take control of 73 strategically-important sites. Kalamazoo’s criteria for acquiring properties is instructive, emphasizing not just job or investment potential, but also strategic factors, such as building on previous investment, and the potential for reaching critical mass.⁵

The critical mass concept is best exemplified by the River’s Edge project where 21 acres of industrial land along the Kalamazoo River have been acquired and re-positioned for non-industrial mixed use. Recent development activity (Arcadia Brewing, People’s Food Coop, Mackenzie’s Bakery, One-way Products, and Ignertia) has bolstered the view that the City’s



Kalamazoo's BRA takes possession of strategically-located brownfields sites.

⁴ See : http://www.michigan.gov/deq/0,4561,7-135-3311_4109_23246-63519--,00.html.

⁵ City of Kalamazoo Brownfield Redevelopment Authority, “Site Prioritization Report #3,” 2010.

aggressive acquisition strategy is starting to pay off. The best example of land banking for industrial development is the BRA acquisition and cleanup of a former refinery, now being marketed as the Park Creek Business Park, but it is too soon to determine whether the chancy investment will pay off.

Kalamazoo and other Michigan BRA's point to one key TIF provision that help BRA's act like land banks: the potential for cross fertilization among projects. Once obligations are met for a completed project, the diverted revenue can still be captured for five additional years and can serve to seed a start-up district. This is ideal for a land bank because the expenses for land preparation may need to be funded by revenues from another site.

Other State Policies that Could Pave the Way for a Brownfields Land Bank

While any number of state policies might facilitate making the brownfields-land bank connection, two policies stand out: 1) public agency liability protections; and, 2) development-ready land designations.

Public Agency Liability Protections – obviously acquiring contaminated property is not without risk, and the federal CERCLA liability scheme is not a great comfort to public agencies that take possession of environmentally-impaired land, even for noble purposes.⁶ However, at least six states have recognized this problem and have granted greater liability protection for local governments and redevelopment entities.⁷ These state laws generally go beyond federal law in two aspects: 1) covering sites that are acquired for redevelopment purposes, rather than the narrower federal construct of protecting only “involuntary acquisitions; and 2) coverage of certain elements of third party liability, in addition to liability to the state. Pennsylvania’s 2009 law, cited at right, goes the furthest by protecting against toxic tort, property damages, and natural resource damages.⁸

2009 Pennsylvania public agency liability protections:

“An economic development agency, its officers, directors, employees, and its professional consultants shall not be liable, including but not limited to, for property damages, diminution of property value, stigma damages, natural resource damages, economic loss, bodily injury or death relating to any regulated substance currently or previously released on the property, in any action by a person alleging liability of any kind pursuant to the environmental acts, unless the economic development agency ... directly cause an immediate release or directly exacerbate a release of a regulated substance on or from the property”

⁶ National Association of Local Government Environmental Professionals, “Superfund Liability, A Continuing Obstacle to Brownfields Redevelopment,” 2006. See:

<http://www.nalgep.org/publications/PublicationsDetail.cfm?LinkAdvID=72956>

⁷ Evans Paull, “Mothballed Sites And Local Government Acquisition,” Northeast-Midwest Institute, May, 2008.

⁸ Senate Bill 84, 2009 session, see:

http://redevelopmenteconomics.com/yahoo_site_admin/assets/docs/PA_Act_3_-_Public_agency_liability_protections_Amended_2009.27264132.pdf

As one measure of the disconnect between vacant property land banks and brownfields land banks, there appear to me no particular liability protections in any of the state enabling laws for land banks.

Development-Ready Land Designations – several states have created “development-ready” or “shovel-ready” land designations designed to appeal to business’ needs for quick turn-around in site location decisions. These designations are essentially state stamps of approval that are used to market sites for economic development purposes, more specifically to potential users that have a limited time horizon. Environmental/brownfields clearance is usually only one of 5-10 clearances that states are looking for. The Indiana Shovel-Ready Land designation, for example, requires: executive-level local government official support; clear title or development option; 50-year title search; wetland compliance; infrastructure (transportation, utilities, high speed communications, and water and wastewater) to property line.⁹

The Indiana legislature, it might be noted, recognized that their state cleanup liability laws were insufficient to give purchasers the comfort they needed; so the “Shovel-Ready Land Act” legislation included copying the federal Bona Fide Prospective Purchaser provision into state law.¹⁰ Bona Fide Prospective Purchaser protections differ from some state liability protections in that: 1) the protections are self-administering and do not require a state or EPA review or letter; and, 2) the timing of the protections is immediate if due diligence procedures are being followed (in contrast to some state liability releases that offer protection only after the cleanup is complete). These two elements are particularly important in the context of the limited time horizon of business site location decisions.

TIF and the Brownfields Land Bank

It is no coincidence that all of the above land bank and redevelopment authority examples use TIF as a primary financing tool. TIF is generally the most powerful tool in the local economic development tool shed, but it does not always match up to the somewhat peculiar circumstances of a brownfields land bank.

Our consultant team ran into at least three problems in trying to make TIF work for a brownfields land bank.

1. *The Area/District/Urban Renewal Area Orientation.* In many states (and in the state we were working in) TIF is an area redevelopment tool. Prerequisites for TIF may include designating a “district” and there are often requirements to address area blight through an urban renewal plan. A brownfields land bank may include some areas that are conducive to this approach, but many are isolated sites.

⁹ See: <http://iedc.in.gov/programs-initiatives/indiana-shovel-ready-program>

¹⁰ 2005 House Bill 1653 amends Ind. Code §13-25-4-8; see this article:

<http://www.insideindianabusiness.com/contributors.asp?id=510>

This problem leads us to Wisconsin and their Environmental Remediation TIF program (ER TIF).¹¹ Conventional TIF in Wisconsin must meet certain blight or industrial development requirements; however ER TIFs are exempt from the blight determination. As cited earlier, Michigan also allows non-contiguous properties to be designated for TIF.

This led the consultant team to a proposal that holds considerable promise: what if, as an alternative to urban renewal plan requirements, a brownfields land bank TIF could be defined by the characteristics of the site (presence of contamination) rather than by geography?

2. **Pooling.** Some states require that TIF revenues be returned to general funds after the district's obligation is paid off. In the above examples, all of the cited states (Ohio, Michigan, Wisconsin, and Minnesota), at least two states allow pooling of TIF resources between districts and projects. In this fashion, mature districts/projects can seed start-up districts/projects. This is a particularly important factor for brownfield sites because of the longer lead time and greater upfront expenditures required to create development-ready land. Absent this provision, a brownfields land bank would have to be heavily capitalized from another funding source.
3. **Debt Limitations.** The author's client city is affected by state imposed debt limitations and is very near the ceiling for TIF debt. This issue, again, leads to Wisconsin where the Environmental Remediation TIF's are exempt from state imposed debt limitations. The rationale for this exception is: 1) brownfields tend to be long-term vacants with little prospect of economic activity absent the availability of TIF incentives; and 2) the economic and fiscal importance of restoring economic activity on sites that are currently draining community resources. Wisconsin also created a special municipal obligation in state law for its EPA Revolving Loan Fund monies, which exempts those types of brownfields loans from state debt limitations.

Inventing the Brownfields Land Bank

Some of the lessons learned are to:

- ***Be strategic about property acquisition*** – a brownfields land bank should not be a repository for hopeless sites; nor should it be competing with private developers for sites that are in the low-hanging fruit category. Choose sites that need a boost and contribute to big picture objectives – it's not possible to turn all ugly ducklings into swans.
- ***Adopt state liability protection mechanisms*** – land banks in states that have carved out particular protection for public and quasi-public agencies are in a much better position than those that have not. Additionally, states like Indiana that have adopted the federal Bona Fide Prospective Purchaser (or similar) protections will be ahead of others in making sure that business prospects will also have good liability protection.

¹¹ See: <http://www.dor.state.wi.us/forms/govtif/erbase.html>

- **Work under State “Development-Ready Land” programs** – these programs, offering a state stamp of approval that signals minimal delay, are very complimentary to a brownfields land bank and may be a real key to attracting manufacturing back to former industrial sites.
- **Use TIF as the primary land bank financing tool, but modifications may be necessary** – TIF can be the key incentive that makes it all work, but there are two provisions that can make the difference between success and failure: 1) allowing non-contiguous properties outside of urban renewal districts and exempt from area planning requirements; and 2) allowing pooling or cross fertilization so that mature projects can seed start-up projects.
- **Make aggressive use of other incentives** – land acquisition and site preparation for development-ready land is more expensive and riskier than traditional gap-financing. HUD 108 is a good source for initial borrowing and can be matched up with TIF for repayment. We also note St. Paul’s status as a New Markets Tax Credit CDE was advantageous, and Ohio’s Clean Ohio bond funds were a good match for Cleveland’s Land Bank. Lastly, EPA’s Brownfields RLF can be matched with TIF as the re-payment stream.

A brownfields land bank could be a key long term economic redevelopment mechanism, holding particular promise as an element of strategies for “re-shoring” US manufacturing. Brownfields land bank entities would need to be endowed with a mix of tools that are derived from best practices from both vacant land banks and redevelopment authorities. Modified use of tax increment financing authority is the key element that could determine success or failure.

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