

**REPORT OF THE
STATE OF CONNECTICUT**

**TASK FORCE
ON
BROWNFIELDS STRATEGIES**

Submitted to the

**Commerce Committee
&
Environment Committee**

of the

Connecticut General Assembly

FEBRUARY 2007

PURPOSE OF THE REPORT

The purpose of this report is to respond to Public Act 06-184, "An Act Concerning Brownfields." Pursuant to Section 11, a nine-member task force was created to develop long-term solutions for cleaning up Brownfields. In the Act, a Brownfield has been defined as "any abandoned or underutilized site where redevelopment and reuse has not occurred due to the presence of pollution in the soil or groundwater that requires remediation prior to or in conjunction with the restoration, redevelopment and reuse of the property." The Task Force was to "study strategies for providing long-term solutions for the state's Brownfields".

It is our hope that the Report will encourage debate and lead to modifications of our State's Brownfields programs. This Report makes a number of recommendations in order to stimulate Brownfields reuse and redevelopment and to prevent sites from becoming future Brownfields. New tools and incentives are needed to spur new development on these sites and encourage reluctant owners to participate in the clean up, transfer and reuse of their properties. It is clear to the Task Force that new incentives are needed to stimulate enhanced private sector investment in Brownfields redevelopment.

The recommendations in this Report will undoubtedly require accepting significant and, in some cases, controversial changes to existing programs, structures and philosophies. A new approach is needed to our State's approach to Brownfields, including providing financial support and liability relief to municipalities, existing and future owners. The programs must be made available to the community non-profits and regional economic development authorities. They need to be more user friendly for all parties - local communities, developers and existing property owners. In addition, the existing programs need to support a wide variety of potential end uses, including manufacturing, retail, residential, municipal, educational, parks, community centers, and mixed use, in *every* municipality. Existing programs must also cover a number of additional costs that support such development, including the costs of investigation, assessment, remediation and monitoring, costs associated with institutional land use controls and building and infrastructure remedial activities.

Only a concerted effort to address the Brownfield properties in our state will improve the economic development opportunities and quality of life for all who live and work in Connecticut.

ADOPTION OF REPORT

On Wednesday, February 7, 2007, the Task Force members adopted and voted in favor of this report and its recommendations. In keeping with the separation of power between the Executive Branch and Legislative Branch of Government, Commissioner Gina McCarthy and Deputy Commissioner Ronald Angelo, Jr. appropriately abstained from the final vote on the Task Force's Report.

MEMBERS OF THE BROWNFIELDS TASK FORCE

<u>Member</u>	<u>Position/Occupation</u>	<u>Appointing Authority</u>
Ann M. Catino, Co-Chair	Partner, Halloran & Sage, LLP	President Pro Tempore of the Senate
Gary B. O'Connor, Co-Chair	Partner, Drubner, Hartley & O'Connor, LLC	Speaker of the House of Representatives
Gina McCarthy	Commissioner, Department of Environmental Protection	Statutory Member
Ronald F. Angelo, Jr.	Deputy Commissioner, Department of Economic & Community Development	Governor
Laura T. Grondin	Member, Board of Directors, Connecticut Development Authority & President and CEO, Virginia Industries, Inc.	Governor
Lee D. Hoffman	Partner, Pullman & Comley, LLC	Majority Leader of the Senate
Charles T. Kellogg	Chairman and Chief Financial Officer, Hubbard-Hall, Inc.	Minority Leader of the House of Representatives
Frank Moore	The WorkPlace, Inc.	Majority Leader of the House of Representatives
Stephen R. Sasala	President & CEO, Waterbury Regional Chamber	Minority Leader of the Senate

BROWNFIELDS TASK FORCE REPORT

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I. EXECUTIVE SUMMARY

Brownfields remediation and development has been one of the most significant public policy initiatives over the past decade. Since the early 1990's, the federal government and many states have focused their attention on the problems associated with Brownfield sites. Last year the State of Connecticut renewed its commitment to Brownfields remediation and development when the General Assembly passed and Governor Rell signed into law Public Act 06-184. The Act established the Office of Brownfield Remediation and Development ("OBRD") and created the Brownfields Task Force. The Task Force has been asked to study strategies for providing long-term solutions for the State's Brownfields and to make recommendations to the General Assembly regarding feasible legislative initiatives.

The Task Force believes that there must be a comprehensive and fully integrated Brownfields program in Connecticut. Studying Brownfields, however, leads to a perfect storm of colliding interests as a myriad of affected interest groups exist: municipalities, economic development organizations, environmental groups, existing and prospective property owners, business and industry, and community groups all have different goals and objectives. Framing the debate with the agencies that have responsibility for Brownfields growth and development also results in stirring already turbulent waters in order to determine the type of organizational and programmatic change that is necessary to stimulate real development and reuse of the sites. Charged with the responsibility of charting the course for a long-term solution, the Task Force offers this Report as a compromise, first step proposal for modifying the state's approach to Brownfields development and reuse. While we have attempted to develop a comprehensive approach, the issues are extraordinarily complex and multidisciplinary and require far more time than the five months that were dedicated to this endeavor, even considering the high level expertise and commitment of the Task Force members. There is no silver bullet or one-size-fits-all approach to solving the Brownfield puzzle. Although other state programs provide a useful guide, the solution for Connecticut is multifaceted and requires a substantial financial commitment from the State.

The Task Force respectfully offers the Commerce and Environment Committees the following recommendations to foster and change the State's Brownfields programs. While many of the recommendations may not cause the storm to cease, we do believe that when taken together, they provide the navigational tools and foundation for the development of a longer-term program and policy initiative. The Task Force hopes that the following recommendations will be the first of many creative proposals offered towards finding solutions for a cleaner and more prosperous Connecticut. In brief, we offer:

- Organizational Coordination. The State's Brownfields programs should be a priority economic and community development initiative, streamlined and coordinated through the Office of Brownfield Redevelopment, with dedicated staffing and resources, and with clearly defined roles for the

Department of Economic and Community Development (DECD), the Connecticut Development Authority/Connecticut Brownfield Redevelopment Authority (CDA/CBRA), and the Department of Environmental Protection (DEP) in order to take advantage of each agencies' specialized expertise and to provide the appropriate skill level to the office and its program initiatives.

- Program Funding. Three new grant and loan programs should be developed and initially capitalized with \$75 million to “jump start” this Brownfields reform and revitalization initiative. An additional \$25 million should be allocated every year for five years to provide a consistent revenue stream to the programs. Such funding, at a minimum, is on par with the amounts provided by other states. And, given the very real and high cost associated with addressing Brownfield issues, the funding should be constantly reevaluated so that the appropriate support is provided in the long term. For Brownfield redevelopment to occur, even over the long term, an enormous long-term financial commitment from the State is required.
- Incentives. The public and private sector require certain incentives in addition to the funding programs in order to engage in Brownfield redevelopment. A comprehensive Brownfield program includes liability relief, regulatory and program certainty and closure, and other instruments (e.g., property tax relief, tax credits, and environmental insurance) in order to promote Brownfields development. All such incentives include providing support to municipalities, economic development agencies, regional economic development authorities, not for profit community organizations, existing private property owners (“Legacy Owners”) ¹, and new companies seeking to develop a Brownfields site (“White Knights”) ² anywhere in the state for any beneficial, economic or community reuse.

In this Executive Summary, we review the issue and identify some of the barriers to Brownfields development. A more comprehensive analysis follows in the report to support and elaborate on our three primary recommendations identified above.

¹ Legacy Property Owner is defined as anyone whose predecessors or own activity contaminated the property decades ago because those historical activities were common practice and not restricted by law or regulation.

² White Knight is defined as anyone who did not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste and such person is not a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable under C.G.S. §§ 22a-432, 22a-433, 22a-451 or 22a-452.

A. WHAT IS A BROWNFIELD?

Public Act 06-184 defines a “Brownfield” as “*any abandoned or underutilized site where redevelopment and reuse has not occurred due to the presence of pollution in the soil or groundwater that requires remediation prior to or in conjunction with the restoration, redevelopment and reuse of the property*”. A Brownfield can be an abandoned factory site or a business property that is underutilized because of actual or potential contamination. A Brownfield can be located in an urban center or in a rural community. A Brownfield can be a small site on which a dry cleaner or gas station was located. It is estimated that there are as many as one million Brownfields in the United States and thousands in Connecticut. Brownfields may pose environmental and health risks to a community and may lead to further blight of the surrounding areas.

B. WHY IS BROWNFIELDS REVITALIZATION IMPORTANT?

Despite the problems associated with Brownfields, their remediation and development offer many health, economic development, smart growth and community benefits crucial to the future of Connecticut.

- **Environmental and Public Health Benefits.** Remediation of Brownfields has the obvious benefits of restoring the environment and protecting the general public from health risks related to exposure to toxins present on these sites.
- **Economic Development.** The development of a remediated site can create new economic activity on the Brownfield and also serve as the catalyst for additional economic development in surrounding areas. Often, Brownfields are located in prime areas near highways, railroads and close to large population centers. More often than not, Brownfields are served by an existing infrastructure. These sites, free of their environmental challenges, are logical locations for the development of commerce.
- **Increased Tax Revenues.** Returning Brownfield sites to productive use will increase real estate and personal property tax revenues for municipalities and provide additional income and business tax revenues for the State.
- **Jobs.** Aside from the jobs created by businesses locating to a Brownfield site, there are excellent job opportunities in the fields of hazardous waste assessment and remediation. Likewise, the construction activities related to the development of Brownfield sites provide valuable job opportunities in the building trades.
- **Revitalization of Urban Centers.** Although Brownfields are not confined to our urban communities, a significant percentage is located

there. Their presence restricts economic development possibilities and, indeed, often serves as a catalyst for the further deterioration of the surrounding neighborhoods. **Connecticut simply cannot permit the adverse effects of Brownfields to further deteriorate our important urban centers.** A thoughtful and effective Brownfields remediation and development program can bring new economic prosperity and neighborhood revitalization to our major cities.

- **Community Development.** Restoring a Brownfields area in a community through municipal and nonprofit community investment can remove blight and restore pride in a neighborhood. It can be the first step for further development, increase the quality of the housing and small businesses and stimulate important social and economic development.
- **Smart Growth.** Brownfields redevelopment is a crucial component of smart growth. Last October, Governor Rell issued Executive Order Number 15, which created the Office of Responsible Growth and launched her initiative to promote future development that is well planned, economically strong and environmentally sound. A 2001 EPA-sponsored study found that 4.5 acres of greenfields are saved for every one acre of Brownfields that is developed.

C. **IMPEDIMENTS TO BROWNFIELDS DEVELOPMENT**

Thousands of Brownfield sites, relics of our manufacturing and industrial past, remain abandoned, underutilized or neglected because of the complexity of the issues and costs associated with redevelopment. Market factors, administrative impediments and liability concerns have created significant disincentives for municipalities, developers, businesses and other stakeholders to remediate and develop Connecticut's Brownfields.

- **Market Factors.** For the most part, Brownfield sites, without further incentives, remain financially unattractive to developers, business entities and other interested stakeholders. Brownfield sites pose substantial—often prohibitive—costs associated with environmental site investigation, remediation and infrastructure abatement. The increased time resulting from site assessments and cleanup translates into additional carrying costs and opportunity loss. Moreover, developers and other potential users of Brownfields face additional uncertainties related to the overall scope and cost of remediation, the timeliness of regulatory review and approval, and the potential for post-remediation audits that may occur years after a property has been remediated and the potential for reopeners by the Department of Environmental Protection (DEP). These uncertainties make it difficult—if not impossible—to accurately measure the financial feasibility of potential Brownfield redevelopment projects.

- **Administrative & Funding Impediments.** There is no single agency and no single program dealing with Brownfields remediation and development. Indeed, there are a number of public and quasi-public agencies involved in the regulatory and economic development components of Brownfields revitalization. Until recently, there was no single point of entry, which made it difficult for stakeholders to navigate through the state bureaucracy. And, with the exception of CBRA, there are no agency personnel solely dedicated to Brownfield issues. There is a perception in the regulated community that the state agencies dealing with Brownfields are clearly understaffed. The Task Force has found that these agencies are fortunate to employ many extremely talented and conscientious professionals who are called upon on a case-by-case basis; nevertheless, the lack of adequate staffing levels comprised of individuals solely dedicated to Brownfield issues will make it extremely difficult for those state agencies to respond in a timely and effective fashion to Brownfield initiatives. Additionally, although the State has established several funding programs, these programs are excessively cumbersome, limited in scope, applicability and geography. Further, much uncertainty exists as to whether funding is truly available. Because of the risks associated with Brownfield investigation and remediation, conventional lenders often do not provide the needed financial tools for a developer. State programs currently do not fill funding gaps in the often rapid time frame involved with development.

- **Liability Uncertainty.** Property owners and other parties interested in developing Brownfields have three major liability fears: (i) gaining knowledge of the nature and extent of contamination and the potential liability and costs that follow once the property condition is known; (ii) further administrative action by DEP through reopeners and post-remediation audits; and (iii) third party lawsuits even though a property has been remediated to federal/state standards. Liability concerns have caused property owners to leave sites idle and the associated risks pose impediments to conventional financing.

D. HIGHLIGHTS OF KEY RECOMMENDATIONS

Our State has many mature programs that, in the short term, must be built upon, expanded or replaced to meet the demands of the market. When and where appropriate, programs in other states provide a valuable guide to the development of new initiatives in Connecticut. We offer these recommendations to address organizational, funding and programmatic changes that we believe may be accomplished in order to begin the process of comprehensive change to meet current development needs. In the longer term, continued evaluation of our State's programs is needed so as to develop a blueprint for a more rigorous and revolutionary change in our State's approach to Brownfield development.

- **Organization.**

- **OBRD Structure.**

- The OBRD, which was recently created by Public Act 06-184, must currently serve as the institutional focal point for Brownfields issues in the State of Connecticut and be the initial point of contact between state agencies and the public. In an ideal world, the OBRD would be a separate agency, reporting directly to the Governor; however, given the State's budgetary constraints, and familiarity with Brownfield issues, the Task Force recommends that the OBRD continue to be located within DECD's existing organizational structure and staffed with professionals solely dedicated to Brownfields initiatives. The OBRD should report directly to the Commissioner of DECD.

- **Inter-Agency Cooperation.**

- In order to achieve the necessary inter-agency cooperation, each of the participating agencies (i.e. DECD, CDA/CBRA, DEP, DPH, DOT and the Office of Responsible Growth) should provide the required senior level management and senior staff level personnel. A Memorandum of Understanding clarifying the relationship between the OBRD and the participating agencies should be executed.

- **Organizational Funding.**

The successful operation of the OBRD and the implementation of the State's Brownfields initiative cannot be achieved without the financial commitment of the State. We recommend the following minimum additional funding:

- \$1,500,000 to DEP, adjusted on an annual basis, to hire one new supervisor and six new staff level employees dedicated solely to the Brownfields initiative.
- \$1,500,000 to DECD, adjusted on an annual basis, to hire staff and operate the OBRD.
- \$500,000 to DECD to implement OBRD marketing, education and outreach programs.

- DEP Requirements.
 - OBRD must coordinate with DEP to streamline regulatory procedures and provide certainty and finality for the regulated community under State cleanup programs. Since the successful development of Brownfield sites is tied to a fast, certain and effective regulatory process overseen by DEP, it is imperative that DEP hire additional professionals dedicated to the Brownfield program.

- Education and Outreach.
 - The OBRD must play a critical role in educating stakeholders regarding the plethora of financial incentives, programs, regulatory requirements and transactional issues relating to Brownfields revitalization. A comprehensive outreach and marketing program (including technical assistance, workshops and seminars) directed towards municipalities and economic development agencies should be initiated by OBRD.
 - OBRD must launch the pilot program in the four designated communities immediately upon receiving funding.

- Funding Programs.
 - The State must provide a full array of grants, loans and tax relief programs to incentivize municipalities, developers and businesses to invest in the remediation and development of Brownfields. These programs must be funded at appropriate levels and coordinated through the OBRD. The goals of the State's Brownfields initiative will only be achieved if the State appropriates funding at a level comparable to the real costs associated with Brownfield investigation and remediation, which has also been recognized by other states. The following table identifies and briefly explains the new programs to be established.

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New Programs	Amount	Recommendation & Eligibility	Use of Funds	Award
General Program Funding	\$75 million with an additional \$25 million for 5 additional years	Provide an initial dedicated fund in the amount of \$75 million, with additional appropriations of \$25 million per year for the next five years.	To fund the three new programs referenced below and to support CDA/CBRA underwriting costs for a reduced TIF and loan guarantees	
1. Municipal & Regional Economic and Community Grant Program	\$32.5 million	Create a fund to provide municipalities, economic development authorities, regional economic development authorities or qualified community-based non-profits (501(c)(3)s) with grants necessary to foreclose, develop, investigate, remediate and reuse or sell Brownfield properties within their towns and regions out of the Brownfields Fund.	Grants may be used for manufacturing, retail, residential, municipal, educational, parks, community centers, or mixed use. The grants are limited to \$4 million per project.	Grants will be awarded by OBRD on a competitive basis, annually. Grants to be used for the costs of investigation, assessment, remediation, abatement, hazardous materials or waste disposal, long term groundwater or natural attenuation monitoring, costs associated with an environmental land use restriction, attorneys' fees, planning, engineering, and environmental consulting costs, and building and structural issues, including demolition, asbestos abatement, PCB removal, contaminated wood or lead paint removal and other infrastructure remedial activities.
2. Targeted Brownfield Development Loan Fund	\$32.5 million	Create a revolving loan fund program available to new developers, who have no direct or related party liability for the site conditions (the "White Knight"), or existing property owners ("Legacy Owners") who (1) are in general good standing or otherwise compliant with DEP regulatory programs; (2) demonstrate an inability to pay; and (3) who cannot retain or expand jobs due to the costs associated with the investigating and remediating the contamination.	These loans will be provided to White Knights for any type of development or Legacy Owners who seek to develop Brownfield sites for the purposes of retaining or expanding jobs in the state. The loans are limited to \$2 million per year for up to two years.	Awarded on a rolling basis depending upon the merits of the proposal. Loans can be applied to any of the costs described above. Recipient must enter a DEP program.
3. Small Business Grant Assistance	\$5 million	The Small Business Grant program will assist start ups and small business property owners who cannot develop, retain or expand jobs due to the costs associated with the investigating and remediating the contamination. Eligible businesses are defined as those seeking to create 50 jobs or less or seeking to retain or expand to 50 jobs or less.	Grants are provided up to \$50,000 for site investigation and assessment and up to \$300,000 for total investigation and remediation.	Awarded on a rolling basis depending upon the merits of the proposal and may cover any cost. Recipient must enter a DEP program.
4. CDA/CBRA TIF & Loan Support	\$5 million	Provide additional incentives to cover transaction costs to the TIF program. Make the TIF program more attractive by expanding its scope to include different types of projects, including residential and mixed use, and by lowering the minimum TIF amount from \$500,000 to \$250,000 and expand the Loan Guarantee Program to include Brownfield remediation and development as an eligible use.	To provide a minimum \$250,000 TIF and expand its scope to a wider variety of projects, including mixed use.	At the discretion of CDA/CBRA
5. CDA/CBRA Loan Support	Same as above, division is at the discretion of CDA/CBRA	Provide additional support to CDA to expand the Loan Guarantee Program for guarantees to private lenders to include Brownfields redevelopment.	To provide loan guarantees for Brownfield developers	Provide a guarantee for up to 30% of the loan.

- **Liability/Regulatory Reform.** Brownfields revitalization will not succeed without meaningful liability relief that distinguishes actual polluters from entities that are dedicated to remediating sites and bringing them into productive re-use. Existing and prospective property owners need to know that once they have cleaned a site to regulatory standards they will not be subject to further liability from the DEP for on-site or off-site impacts. Likewise, these parties need relief from post-remediation claims by third parties. However, such relief must be balanced against retaining liability claims against viable, responsible parties who have elected to ignore or be recalcitrant in achieving the state's remedial goals. The Task Force believes that the complex issues related to third-party liability claims require a comprehensive statutory overhaul and, as such, the Task Force recommends that any proposals regarding third-party liability be deferred to the 2008 legislative session. The Task Force, nevertheless, believes that the following recommendations for regulatory liability relief be considered in this year's session.
 - Voluntary Brownfield Remediation Program - The State must develop a true voluntary Brownfield remediation program, working through the Department of Environmental Protection to provide meaningful, upfront, mutually-agreed protections to those entities who are willing to undertake Brownfield remediations. This program would provide the State with assurances of a timely executed complete clean-up and would provide Brownfield developers with greater regulatory certainty.
 - Amendment of the Remediation Standard Regulations - As the Department of Environmental Protection continues to amend its Remediation Standard Regulations, it should do so in a way that maximizes the speed and certainty of Brownfield redevelopment, without compromising human health or environmental standards.
 - Amendment of the LEP Program - Currently, private practitioners known as Licensed Environmental Professionals (LEPs) can be utilized to verify to the Department of Environmental Protection that a particular site has been remediated in accordance with the applicable regulations. This program has been successful; however, there is uncertainty as to when the Department will review/audit a particular verification. The LEP Program should be amended to provide greater certainty around these verifications so that all parties: DEP, the developers and the community at large will know when a site has been successfully remediated. The LEP Program should also be amended to provide for a broader range of enforcement mechanisms to ensure the integrity of the Program.
 - Additional Cost Recovery Tools - The Legislature should examine providing additional tools for Brownfield developers to obtain recovery of

remediation costs from responsible parties in light of changes to the applicable federal law. Such tools would include increasing the ability of a Brownfield developer to bring a suit against prior owners or operators of a site who have caused contamination and have ignored their Brownfield obligations.

II. TASK FORCE BACKGROUND

A. Creation & Membership

Public Act 06-184 created the Brownfields Task Force to study strategies for providing long term solutions for the state's Brownfields. The goal of the Brownfields Task Force is to make recommendations to refine the current statutory framework and programs so that Connecticut may be one of the country's leaders in restoring our Brownfields to productive economic and community reuse.

The Task Force has been supported through the staff at DECD, DEP and CDA/CBRA as it engaged in reviewing the existing Connecticut programs. They provided valuable technical assistance, insight, and support to the Task Force on how the existing state programs are working. The agencies who are involved on a daily basis in Connecticut are earnest and dedicated to moving forward with new programs and initiatives in order to foster Brownfields development.

The Task Force members are grateful to these public agencies that spent the time with us and assisted us in our meetings and responding to our various questions. The Task Force members also thank the General Assembly and the appointing authorities for the opportunity to serve on this Task Force and make recommendations for what we believe will be the start of a very important initiative for determining the future of Connecticut Brownfield properties.

The Task Force's work was supplemented by work concurrently underway by the OBRD, which was also created by Public Act 06-184. The new OBRD is to:

- (1) create streamlined procedures and policies for Brownfield remediation;
- (2) Identify existing and create new sources of funding for Brownfield remediation and develop procedures for expediting the application for and release of funds to municipalities or economic development agencies;
- (3) Establish a place where municipalities or economic development agencies may facilitate compliance with state and federal clean up requirements and qualification for state funds;
- (4) Identify and prioritize Brownfield development opportunities;
- (5) Analyze any action taken by other states, particularly New Jersey and Pennsylvania, regarding Brownfield remediation and liability; and
- (6) Develop and execute an outreach program to educate property owners and potential property owners with regard to state policies and procedures for Brownfield remediation.

As part of its activities, the DECD commissioned the University of Connecticut's Department of Public Policy to conduct a study of comparative state programs. Task force members were aware of certain states that had programs that were more advanced than Connecticut's and recommended that New Jersey, Pennsylvania, and Massachusetts be included in the study. Representatives involved in drafting the UCONN study were also requested to join the discussion of the types of programs available in other states compared to Connecticut's programs. While drafts of the study were provided to the Task Force so that it could evaluate other state programs, the final UCONN report has not yet been issued.

B. Meetings

The Task Force began meeting on September 15, 2006 and held 21 meetings to gather facts, discuss the programs the state currently implements to foster Brownfield development and develop this report and its recommendations. Meetings of the Task Force initially were devoted to hearing from municipalities, buyers and sellers, property owners and developers, environmental attorneys, bankers and insurance company representatives who are involved in the day-to-day challenges presented by these sites. As part of its due diligence, the Task Force heard the testimony of over 35 experts in the fields of property development, economic development, environmental remediation and urban planning.

The meetings held were as follows:

September 15, 26
October 10, 24, 31
November 11, 21, 28
December 5, 12, 19
January 2, 9, 15, 22, 30, 31
February 2, 5, 6 and 7

On October 24 and 31, the Connecticut Television Network (CTN) broadcast the proceedings of the Task Force and the telecasts are available to be viewed on the CTN website (<http://www.ctn.state.ct.us>). Notices, agenda and minutes of the Task Force Meetings were kept for each of the meetings and a copy of all are being submitted to the Commerce Committee.

On Wednesday, February 7, 2007, the Task Force members adopted and voted in favor of this report and its recommendations. In keeping with the separation of power between the Executive Branch and Legislative Branch of Government, Commissioner Gina McCarthy and Deputy Commissioner Ronald Angelo, Jr. appropriately abstained from the final vote on the Task Force's Report.

C. Objectives

The balanced membership of the Task Force (which includes representatives from the critical agencies (DEP, CDA/CBRA and DECD), two representatives from the manufacturing sector, a representative from a non-profit redeveloper, a representative from a regional economic development authority, and three attorneys who practice in the area of Brownfield development) led to lively, informed and experienced discussion and debate from the affected stakeholders. In addition, discussion also regularly included the staff of the DECD, OBRD, CDA, CBRA and DEP, representatives from the Connecticut Chapter of the National Brownfield Association, and members of the public who were also interested in Brownfield reform. From the very beginning, this topic had drawn and attracted significant and overwhelming interest from across a wide spectrum of interests.

Early on the Task Force members recognized that the mission delegated was exceptionally complex and challenging to perform in five months. Additionally, we believed that resolving certain of the issues involved reaching out to other interested parties (e.g., the trial lawyers, insurance companies, the Department of Insurance, and the Department of Revenue Services), among others. Time did not permit addressing all the issues that were identified and engaging in meaningful discussion with these other interested parties. Therefore, we approached Brownfield reform from two different angles: (1) Evolutionary and (2) Revolutionary.

Connecticut has a number of Brownfield programs administered by primarily three agencies: DECD, DEP and CDA/CBRA. The role of each agency will be discussed further in this report. For now, it is important to understand that within DECD, the Office of Infrastructure and Real Estate (OIRE) exists which had been coordinating the existing state programs. Now, the new OBRD will exist within the OIRE. Within CDA, the Connecticut Brownfields Redevelopment Authority also administers Brownfield programs and, when appropriate, coordinates with DECD. DEP's role is to evaluate a site in accordance with the Remediation Standard Regulations (RSRs) and to insure that the site meets the applicable RSRs upon cleanup to a particular use. DEP is currently reviewing its organizational structure; however, no position currently exists within DEP to administer Brownfield development and to coordinate on a regular basis with DECD and CDA/CBRA. Rather, whether a site achieves RSR compliance is within DEP's Bureau of Water Protection and Land Use, Remediation Division; and the staff could be working on remediation issues one day and other permitting issues the next. Commissioner McCarthy is committed to conducting an internal analysis of DEP's performance, organizational issues and staffing, and has made it clear to the Task Force members that she wants to recalibrate the Agency before requesting the addition of new staff or new positions. In fact, all the affected agencies were reluctant to promote wholesale change and expressed a desire to allow the agencies to sort through many of the organizational issues themselves.

Institutional barriers and organizational culture present a very real challenge to Brownfield reform, which is a multi-agency and interdisciplinary issue. Therefore, a less radical approach in the short term that promotes evolutionary changes appeared to be a

more realistic objective to achieve within five months. This approach also made sense given the Governor's new Office of Responsible Growth (ORG), which was established in Executive Order No. 15, issued in October 2006. The new ORG is within the Office of Policy and Management and complements the objectives of the OBRD and the task force's mission to make recommendations to stimulate development of the state's Brownfield properties, which is more often than not, a smart growth property.

In addition, from a regulatory standpoint, Connecticut has developed certain programs that have existed for decades. These programs resulted from our state's legacy of holding environmental protection in high regard. As a result, while evaluating other state's programs does provide the Task Force and the legislature with valuable information and a point for comparison, any other state's program (or aspects thereof) must be evaluated in the context of the existing state programs and our state culture. Whether certain of Connecticut's older programs should exist or not, must be addressed at a later day. Similarly, whether comprehensive reform of all regulatory programs affecting Brownfields, including the Transfer Act and other DEP related programs, is required is reserved to a later day. While the Task Force can see significant value to other state's overall approaches, this debate, the merits of such programs and whether a shift should occur in Connecticut's overall regulatory approach, could not be permitted in the time allowed. But, the dialogue should continue and a Task Force, such as this one or another, is an excellent forum for further discussion.

Finally, debate on Brownfield programs not only evolves into a discussion of the economic development objectives of the state, environmental policy, and land use decisions, but invites, by necessity, a discourse into local property tax reform and the role of regional economic development authorities. By way of example, although it will be discussed further, to encourage Brownfield development under tax increment financing, the municipality is asked to forego the collection of local property taxes, which is a decision towns are not readily making as the property tax dollar is a scarce resource. Similarly, because the level of knowledge and resources in municipalities are so varying, regional economic development authorities may provide a useful intermediate step between the Town and the State or Federal Government. These issues also require further discussion and reform.

While under section 11 of P.A. 06-187, the Task Force is to look at long term solutions to the state's Brownfield programs, those long terms solutions must be based upon a two-step process for meaningful Brownfield reform to occur. Many modifications need to be made in order to stimulate private investment in Brownfield development. We have approached the larger questions surrounding organizational, programmatic and philosophical approaches from an evolutionary standpoint. However, as indicated above, further wholesale improvements as well as comprehensive structural, cultural and programmatic changes should be further studied. Revolutionary changes should be the subject of further study.

D. General Findings and Overall Issues

A comprehensive Brownfield program in Connecticut is needed in order to: (1) foster job creation and enhancement; (2) promote economic, community and social development; (3) protect our state's citizens from health issues that may result from neglected and improperly developed contaminated property; and (4) foster responsible growth and development within the state.

A Brownfield is a property that is unutilized or underutilized due to the presence or potential presence of hazardous substances and pollutants, where development, reuse, redevelopment or expansion could occur but for the extraordinary costs of managing those pollutants. The cost of developing or reusing a Brownfield site significantly outweighs the cost of developing a greenfield site, which are those properties that do not have a legacy of manufacturing and property contamination. Municipalities, often hungry for development and the ensuing tax dollars often readily allow the greenfield site to be developed so that the company or development does not go to another Town. Rarely do municipalities have the know-how or the resources to foster and encourage the development of the Brownfield property. Consequently, the Brownfield remains a wasted property and opportunity.

Brownfield properties exist in almost every municipality, with the majority of them existing in the major metropolitan areas including Bridgeport, East Hartford, Enfield, Hartford, Meriden, Milford, Naugatuck, New Britain, Norwich, New Haven, New London, Stamford, Waterbury, and West Haven suffering a disproportionate share of the Brownfield sites in the state. Other Towns – primarily those with mills that border the rivers that once provided power and transportation to these sites, also have a large share of the Brownfield sites. These sites are often abandoned relics of a manufacturing, industrial or commercial past. They are urban, suburban and rural blight, attractive nuisances, fire hazardous and pose health and safety concerns. The sites often may pose environmental threats not only on-site but also off-site as contaminants may migrate to the groundwater and flow beyond the boundary of the site. The cost of restoring the property to productive use – either through a new business or industry or even a community park, to a reuse that would go far in restoring a block is complicated because of complex building infrastructure, soil and groundwater issues.

During the course of the hearings and the meetings of the Task Force, three primary themes emerged that need to be addressed in a comprehensive manner: (1) Organizational Restructuring and Timing; (2) Funding and Financing Needs; (3) Regulatory Challenges and Liability Concerns. Connecticut does not have one Brownfield program but has several and the programs exist at various agencies, with varying levels of financial support and staff. Certain types of projects may qualify; others may not. Certain types of pollutants may be remediated through Connecticut's programs; others many not. Several imbalances exist: (1) between the number of programs and the level of funding; (2) between the projects, developers and redevelopers that qualify and those that do not; and (3) between the types of contamination that is covered. As a result, development in Connecticut migrates to the open space,

undeveloped tracts called greenfields, and where the costs are better known, the risks minimized and the time line feasible to meet the market's needs. The mid- and smaller size projects critical to the a vibrant community and "Main Street" environment are lost as the properties appropriate for the smaller business is truly "upside-down", meaning that the costs of clean-up exceeds the value of the property even if cleaned up. The upside-down property needs to be turned right-side up and development of Brownfields needs to be placed on equal footing with greenfields. To encourage Brownfield development, state support and sponsorship is required.

III. EXISTING STATE PROGRAMS

A. DECD/OIRE/OBRD

The Department of Economic and Community Development is authorized to implement a number of programs to foster economic development in the state. Many of these programs are run through the Office of Infrastructure and Real Estate (OIRE). OIRE oversees the financing and funding of a variety of projects, including those involving Brownfields. While many funding tools may be available to a project when it seeks state support (Manufacturers Assistance Act, Urban Act), this Task Force has limited its review to those programs developed by the legislature that are focused primarily on Brownfields redevelopment.

DECD currently works with DEP and CDA/CBRA, both of who also play significant role administering Brownfield programs, on an ad hoc and informal basis depending upon the project. From the client perspective, this tripartite approach to Brownfields is not only confusing but extraordinarily challenging as each agency has its own rules, policies, programs, procedures, reviewing protocol, and time frames.

In 2006, the legislature recognized the need to end the ad hoc and informal approach to Brownfield redevelopment and established an office to centrally and formally manage and implement the state's Brownfield programs and created the OBRD. This new office is to be a more centralized point of contact for developers, property owners and municipalities who seek state support for a Brownfield project.

1. Existing DECD Programs

Currently, three programs are the primary vehicles under which a Brownfield site may receive state financial support from DECD. A brief description and the limitations of each are identified below:

- (a) Urban Site Remedial Action Program "USRAP" (C.G.S. § 22a-133m). This DEP program, established as a pilot in 1992 and then a program in 1994, provides funding to identify and remediate contaminated sites with commercial potential. No dedicated funds are consistently provided for this program; rather, all funding for a project must go before the State Bond Commission after meeting certain criteria established by DECD and DEP. The projects funded through the Urban Site Remedial Action are those in a distressed municipality (as defined in C.G.S. § 32-9p) and a targeted investment community (as defined in C.G.S. § 32-222). USRAP funds, therefore, are limited to 30 communities across the state. Additionally, USRAP funds are to be used only for investigation and

“remediation” of a site. Remediation has been defined by the agencies to limit the funding of only soil and/or groundwater clean-up.

The process to fund a project through USRAP is cumbersome requiring interagency cooperation between DECD identifying the project as a priority, DEP concurrence, and DEP application to the Bond Commission. Thereafter, a memorandum of understanding must be entered into between DEP and DECD for the administration of the funds and review and approval by the Attorney General’s office. Then, once an application for funding is made to the DECD by the applicant for the funds, an Assistance Agreement must be drafted and approved, again by the Attorney General’s office.

According to a 2004 report prepared by the Office of Legislative Research (“OLR”), the program has a current unallocated bond fund balance of \$6.7 million. In 2006, OLR reports that over the fifteen years of this program, only 19 sites have been redeveloped or developed and approximately \$38.5 million has been spent. It should be noted that some significant Connecticut Brownfield redevelopment projects have been funded through this program and the program seems to work well for these extremely large projects with sufficient state, local and developer support so that they can withstand the process. This spending amounts to approximately \$2.57 million/year and approximately \$2 million per site. In 2005 and 2006, no sites were funded through this program and there are no pending applications; although other sites remain within the contours of the program as the site work has not yet been completed. Staff is assigned to this program from either DEP or DECD on a case-by-case basis.

- (b) Special Contaminated Property Remediation & Insurance Fund (SCPRIF) (C.G.S. § 22a-133t & u). SCPRIF was established in 1995. The first application was received and funded in 1998. The SCPRIF program does not have a dedicated source of funding but rather is funded with General Obligation bond authorizations. SCPRIF is a loan program providing loans to towns, businesses, and developers to assess sites and structures and to remediate sites, including lead, asbestos abatement and activities related to demolition. SCPRIF is a DEP program but it is administered by DECD. The DEP prepares bond commission documents and requests a \$1,000,000 allocation of funds. OPM determines when the item will appear on the bond commission agenda. Once it has been approved by the bond commission, an allocation is set aside. DECD requests funds from DEP on a project-by-project basis. DEP allots the funds from the allocation. DECD consults with DEP on every project and asbestos abatement.

As of this report, the SCPRIF program has an unallocated bond fund balance of approximately \$400,000. In the 11 year history of the program,

seventeen projects have been approved for funding totaling \$ 1.9 million. Through a special act, the program was reduced by two million dollars that was provided to the CCEDA for Adriaens Landing project. One staff member is dedicated on a full time equivalent basis to this program with assistance from other staff resources of DECD.

- (c) Dry Cleaner Establishment Remediation Fund. (C.G.S. § 12-263m (a)). The Dry Cleaner fund provides grants to owners or operators of dry cleaning businesses for containment, removal, mitigation or prevention of pollution. It was established in 1994. The Fund is capitalized through a 1% surcharge on the gross receipts of dry cleaning establishments.

According to the 2004 OLR report, fund revenues are approximately \$900,000 / year. This program is the most active of any of the DECD programs, with 58 projects funded since the program began, \$5.5 million approved and \$3.34 million disbursed. At the time of the 2006 OLR Report, 40 applications were received for FY 06, with 29 pending applications. One DECD staff member is dedicated on a full time equivalent basis to this program.

- (d) Other programs. DECD uses other programs to provide assistance to Brownfield sites as part of an overall economic development package offered to a developer. The Manufacturers Assistance Act, C.G.S. § 32-222, provides grants, loans, loan guarantees, and lines of credit for developing real estate for business uses. The Urban Action Grants in Aid (Urban Act), C.G.S. § 4-66c, and the Small Town Economic Assistance Program (STEAP), C.G.S. § 4-66g, also provide assistance. The Office of Policy and Management administers the funding for these two programs.

When these sites are included, the total portfolio of sites, inclusive of the three programs identified above, numbers 119 Brownfield sites. Among the sites where a number of funding methods are used belie the efficacy of the state's Brownfield programs for sites other than the development of the very large projects that have significant state support or where extraordinary circumstances exist, e.g., Meriden Rolling Mills, Waterbury Brass Mill Center, Science Park, Steel Point, Windham Mills, Calamari Brothers Salvage, and New London Mills (Pfizer). In fact, Science Park received \$17,000,000 for investigation, clean up and demolition at a time when none of these "Brownfield" specific programs existed.

The number of Brownfield sites that have received state grants through any of the other available DECD administered programs has remained few and, again, are for the more well known projects. Indeed, very little utilization of these programs is recognized and the type of project remains the ones that are better known in the major urban areas. Exclusive of the SCRIPF or Dry Cleaning Program sites, DECD reports that Brownfield

sites in the following municipalities have received state grants or had expedited reviews by DEP through the Urban Site Remedial Action Program.

Year	Projects	Municipalities Impacted
1993	2	Hartford; New Haven
1994	5	New Haven; Bridgeport; Meriden; Waterbury; Windham
1995	4	Bridgeport; Hartford; New Britain; Shelton
1996	4	Bridgeport; East Hartford (no grant identified); Hamden; Hartford
1997	1	Portland
1998	4	Bridgeport; New London (2); Waterbury
1999	5	Bridgeport (2); New Haven; Norwalk; Waterbury
2000	4	Bridgeport; New Haven; Norwich; Stamford (listed but no financing identified)
2001	6	Bridgeport; Derby; Middletown; New London; Waterbury; Winchester
2002	1	New Haven (to Regional Growth Partnership)
2003	3	Berlin; Bridgeport; Norwich
2004	1	Hartford
2005	2	Griswold; Meriden
2006	1	Hartford

The number of jobs either “created, retained or projected” range from 0 – 2000, with the median at 25 jobs. The total number of acres remediated is at 742 acres, inclusive of the 100 acres involved in the SCRIPF program.

B. CDA/CBRA

The Connecticut Development Authority, a quasi-public entity has administered certain Brownfield programs but currently has one dedicated Brownfield program, the Tax Incremental Financing (TIF) program (C.G.S. § 8-134 & 8-134a), which began in 2001. TIF provides grants to the property owner/developer and uses the anticipated increase in property tax revenues associated with the project to support the issuance of bonds by the CDA/CBRA. The municipality is an integral partner in the financing structure as it has to agree to forego a portion of the incremental property tax revenue in order for the bonds to be paid.

Under the TIF, grants up to \$10 million are available to developers and business owners who undertake redevelopment projects which may be located in any municipality in the state. The grant proceeds must be used for costs associated with the remediation of the project. CBRA issues the bonds for this program. TIF works best when a property initially has no property tax value and/or is not paying any taxes at the time. The incremental increase would then be the full value of the property, which would be available to support the TIF.

CBRA will look at all projects for possible TIF funding. The major consideration for a municipality is to allocate future taxes between TIF costs and debt service as well as any social costs resulting in the redevelopment (i.e., education, police, fire, etc.) Because of high attendant social costs, TIF has not been used for residential or mixed use where the primary component is residential. To date, five Brownfield TIF's have been approved by the CBRA Board. While a TIF may be used for a Brownfield project anywhere in the state and is essentially a grant to the developer, only TIFs in excess of \$500,000 in incremental taxes make financial sense because of the ongoing transaction costs over the life of the bond.

Previously, the CDA administered the Environmental Assistance Revolving Loan Fund (EARLF) (C.G.S. § 32-23qq), which provides loans and loan guarantees for remediation and redeveloping contaminated properties to towns and businesses. To have qualified, annual gross revenues must be under \$25 million and less than 150 employees. EARLF was initially capitalized with a \$2 million GO bond authorization; loans of \$640,000 were provided with an outstanding loan balance of \$10,000 that is currently being repaid. In addition \$1.5 million was used to fund the Connecticut Brownfield Redevelopment Authority (CBRA), which is a wholly owned subsidiary of CDA. The EARLF is no longer used and no additional funding is anticipated.

CBRA also provided several different Brownfield grant programs. Its Brownfield Assessment Grants (BAG) provided reimbursement to developers and municipalities for Phase I (up to \$3000) and Phase II (up to \$10,000) site assessment and investigations. The BAG funds were not available to individuals responsible for site contamination or for remediation costs. Notwithstanding the amount of interest in the BAG program, CBRA has discontinued it because these small amounts were insufficient to move projects along and used significant staff resources to process.

As of the current time, CBRA works to develop and maintain an inventory of Brownfield sites in the state which can be accessed by anyone involved in Brownfield redevelopment. CBRA does significant outreach to all municipalities and coordinates with the municipalities that are interested in the primary Brownfield program administered by CDA/CBRA, the TIF program. CBRA interfaces with DECD and DEP and provides case management services throughout a project's redevelopment.

Not unlike DECD, CDA has a number of economic development tools available to assist a developer of property, including direct loans made for plant, machinery, equipment, working capital and Brownfield redevelopment and incentive packages for relocating and expanding companies. In addition, CDA may also guarantee a portion of loans made by banks to companies of all sizes, as well as its unique TIF financing program.

C. DEP

DEP's role in Brownfield redevelopment is extremely significant as the DEP determines the standards by which a clean-up is to be measured and whether a project developer has achieved those standards. A development, redevelopment or reuse is defined by cost, timing and risk. While DEP does not specifically make decisions on what economic development initiatives should be funded, its role will have an impact on the cost, timing and risk of any project. In the realm of Brownfield redevelopment, DEP is tasked with balancing risk to human health or the environment against the speedy redevelopment of a particular site.

DEP does not currently have a specific Brownfield program or Brownfield coordinator, however, DEP is currently seeking approval to fund a Brownfield coordinator position. DEP works with the other agencies, on a case by case basis, to coordinate the larger projects and does so expeditiously and efficiently. In addition to its case load associated with Brownfield redevelopment, DEP also manages approximately 5235 Transfer Act filings, 109 Urban Sites, 299 voluntary sites under C.G.S. § 22a-133x, 55 voluntary sites under C.G.S. § 22a-133y, 232 RCRA corrective action sites, 232 federal pre-remedial sites, 27 federal remedial sites, 231 state remedial sites, and 395 potable water supply response sites.

DEP does not have a stand-alone Brownfield staff, rather, many, if not all, of the staff members of the Remediation Division may play a role in Brownfield redevelopment. Currently, there are approximately 46 staff members in DEP's Remediation Division. To the extent that a comparison is useful, Massachusetts employs 203 individuals in its remediation program, and New York employs approximately 400 individuals in its remediation program, 15 of which are exclusively dedicated to New York's Brownfield program.

DEP has several regulatory programs designed to provide some certainty to foster clean-up and streamline the timing of project development. Additionally, certain programs are in place to protect innocent purchasers and developers to minimize risk. DEP's programs, however, and by necessity, are also weighed to insuring that our state's industrial properties are cleaned up and human health and the environment are protected.

Connecticut's remedial programs are unique in several respects. Perhaps the one feature that sets Connecticut apart from other states is the operation of the Connecticut Transfer Act, C.G.S. § 22a-134 *et seq.*, which triggers remedial responsibility at the time a property is purchased or sold, rather than when a release of contamination is discovered. As a result of the operation of the Transfer Act, environmental concerns tend to be brought to the fore at the time of a transaction, rather than when contamination is first discovered. Only New Jersey has a program that is comparable in terms of scope to the regime laid out by the Transfer Act.

Connecticut's remedial programs are also unique among the states in that Connecticut is one of the few states that allow qualified environmental professionals to

play a certifying role when remediating sites. While this system is designed to ease the administrative burden faced by DEP when evaluating the steps taken to remediate a site, DEP must still make itself comfortable that appropriate remedial actions were taken at a given site.

Finally, it should be noted that Connecticut's remedial statutes do not closely track federal law in this area. Although the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA" or "Superfund"), 42 U.S.C. § 9601 *et seq.* has been a part of federal law for over twenty-five years, Connecticut has not adopted many of the salient features of CERCLA in its own statutes. As a result, Connecticut's remedial programs may differ widely from the federal programs that are available.

Although the various remedial programs administered by the DEP are necessarily broader than pure Brownfield redevelopment, Brownfield redevelopment cannot occur without being impacted by some, if not all, of the DEP's remedial programs. Accordingly, a brief review of the DEP's chief programs is in order.

1. Transfer Act.

As has been alluded to previously, Connecticut's use of a property transfer program is nearly unique among the states for dealing with environmental contamination. Most states require that environmental contamination be dealt with at the time of discovery. So long as a significant environmental hazard (e.g., the contamination of a drinking water well) does not exist, Connecticut generally does not require the remediation of an historical condition immediately, although it is within the DEP's authority to issue orders to require such remediation.

Rather than pursue remediation at the time of discovery of contamination, the State of Connecticut's programs chiefly use the transfer of a property or business as the trigger by which remediation must be started. Through the use of the Connecticut Property Transfer Act, (C.G.S. § 22a-134 *et seq.*, "Transfer Act"), Connecticut has charted a course whereby the full disclosure of environmental contamination at the time of sale is key, and such remediation can be undertaken at the time of sale, ensuring that proceeds from the transaction can be used to fund the remediation, if necessary. This is a nearly unique approach to the paradigm of environmental remediation, with only New Jersey having a program of similar depth and scope.

Under the Transfer Act, notice must be provided to the DEP every time the ownership interests in an "establishment" are transferred. Within ten days after a property is transferred, the seller of that property must provide DEP with notice of the transfer and a review of the environmental conditions that were found at the site. Unless the parties can verify that there are no environmental conditions at the site which warrant further remediation and/or investigation, one of the parties must certify to the DEP that the party will undertake any necessary site investigation and/or remediation. This means that as a transaction for an establishment is contemplated, the parties must acknowledge

who will be responsible for investigating the site in accordance with applicable DEP standards and who will remediate the site after the deal closes.

At the time of transfer of an establishment, the DEP receives a written certification that the property is either within applicable environmental standards, or receives a commitment from an interested party to bring the site into such compliance. Certifying parties have up to two years to complete the investigation of a site, and up to three years from the transfer of the property to begin remediation. There is no deadline for the completion of the remediation. And as Transfer Act filings continue through subsequent transactions and property sales, they leave overlapping and confusing trails of responsibilities and potential liabilities.

The key to understanding the Transfer Act is understanding that it only applies to the transfer of establishments. The Transfer Act defines establishment as any real property at which or any business operation from which: (A) on or after November 19, 1980, there was generated, except as the result of remediation of polluted soil, groundwater or sediment, more than one hundred kilograms of hazardous waste in any one month; (B) hazardous waste generated at a different location was recycled, reclaimed, reused, stored, handled, treated, transported or disposed of; (C) the process of dry cleaning was conducted on or after May 1, 1967; (D) furniture stripping was conducted on or after May 1, 1967; or (E) a vehicle body repair facility was located on or after May 1, 1967.

In other words, the Transfer Act does not explicitly apply to contaminated parcels, only those parcels that are likely to be contaminated given their prior use. For example, the Transfer Act would apply to the transfer of an active dry cleaning business, even if that business had no releases of pollutants into the environment. Furthermore, the Transfer Act would not apply to a site that has been severely contaminated by hazardous waste that was generated at the site in the 1950s, unless one of the other Transfer Act triggers apply.

Sites which fall into the Transfer Act must be remediated in accordance with the RSRs, which are discussed in greater detail below. Many Brownfields are located on sites that are considered establishments under the Transfer Act, and therefore the Transfer Act, and its remediation requirements, are frequently triggered by Brownfield transactions. This may on occasion cause difficulties for developers of Brownfield parcels as Transfer Act sites must be remediated to applicable standards, including any contamination released off site onto nearby properties. While developers may be willing to remediate the conditions at a particular site, many are leery of signing on to conduct remedial activities on parcels over which they have no control to address contamination that they did

2. Remediation Standard Regulations (RSRs)

The RSRs provide the basis for the majority of clean-ups in Connecticut. The RSRs are the clean-up standards which must be met to ensure the safe reuse of

contaminated properties and govern how clean the soil and the groundwater must be for a given use – commercial, industrial, residential or recreational. The RSRs also provide detailed guidance and standards that may be used at any site to determine whether or not remediation of contamination is necessary to protect human health and the environment. The RSRs do not create in and of themselves a requirement that remediation be undertaken, nor do they specify a time-frame for completing remediation, rather they merely provide the benchmarks that a remediation must achieve in order to be deemed complete.

The RSRs contain numeric and narrative standards for the remediation of both soil and groundwater. Under the RSRs, the party conducting a remediation must consider the relevant criteria for both environmental media. Factors that may affect the degree of remediation at a polluted site include the groundwater quality classification of the site, the land use of the site, and proximity to sensitive receptors of the contamination. Indeed, many of the RSR standards have different values depending on the intended future use of the property. For example, for a site that has soil which has been contaminated with petroleum, the Direct Exposure Criteria for residential properties is 500 mg/kg while the Direct Exposure Criteria for industrial/commercial properties is 2500 mg/kg.

Such a difference in standards is owed solely to the anticipated use of the site. Because individuals frequenting a commercial establishment are less likely to have young children present who inadvertently ingest petroleum contaminated soil, the risks associated with such contamination are less, and the standard can be higher and still be protective of human health. In much the same fashion, some contamination can be addressed under the RSRs by using engineered controls, such as placing it under a cap (including a building or a parking lot) or otherwise rendering it inaccessible. By proceeding in such a fashion, the environmental risk is addressed, but the property owner is not required to remove every scrap of contamination from a site.

Such restrictions, for example, restricting a site to commercial use or placing contamination under a parking lot or other permanent cap, must be memorialized so that their long-term effectiveness is guaranteed. In order to do this, the RSRs incorporate an institutional control, called an Environmental Land Use Restriction (ELUR), which may be used on any applicable property. An ELUR may best be viewed as an alternative to remediating contamination to a concentration that is consistent with specific criteria of the RSRs. The purpose of an ELUR is to prevent certain types of uses of a property, to limit specific activities on a contaminated property or to minimize the risk of exposure to the pollutants. For example, an ELUR may prohibit the destruction of a building located above contaminated soil to prevent the contamination from being exposed, or an ELUR may restrict a property's use to only commercial or industrial endeavors.

In order to use an ELUR at a site, the DEP must first approve the ELUR for that particular site. Although the form of the ELUR can be found in the RSRs, each ELUR is site-specific and must be tailored to a particular site. Once approved by the DEP, an ELUR must be recorded on the municipal land records. Because the ELUR is recorded

on the land records, the requirements of the ELUR are binding on the present and future owners and occupants of the property unless a release from the ELUR is approved by the DEP. It is important to note that the action restricted or prohibited by an ELUR can be undertaken but only after notifying the DEP and obtaining a release from the ELUR in whole or in part. The option of using an ELUR is at the sole discretion of the property owner; the DEP cannot force the use of an ELUR at a particular site.

3. Voluntary Remediation.

There are two voluntary remediation programs in Connecticut. Both programs may be used by property owners who wish to expedite the remediation of polluted property, whether to discharge such liability from their financial records or to place themselves in the best possible footing for a property sale.

The first of these two programs can be found at C.G.S. § 22a-133x. This program is designed for use by owners of sites that are 1) owned by a municipality, or 2) defined as an establishment under the Transfer Act, or 3) listed on the DEP's inventory of hazardous waste disposal, or 4) located in an area where the groundwater is classified as GA or GAA (drinkable). The program can require that the remediation be approved by the DEP, or it can permit an LEP to verify that appropriate remedial actions have taken place.

The other voluntary remedial program can be found at C.G.S. § 22a-133y. This program is designed to address property which has been subject to a spill must be located in an area where the groundwater is classified as somewhat contaminated (i.e., GB or GC) and the site must not be subject to any order, consent order or stipulated judgment issued by the DEP. Once work is completed under this program, a Licensed Environmental Professional submits a final remedial action report which the DEP has up to sixty days to review.

4. Covenants Not to Sue.

A covenant not to sue is an assurance that once a site is remediated in accordance with the RSRs, the DEP will not require any additional cleanup in the future. It is an agreement by the DEP not to require remediation or take any action against the holder of the covenant for contamination which was caused by a spill or other release on the property prior to the effective date of the covenant. In order to obtain a covenant not to sue, the property must be remediated in accordance with the RSRs, and any ELURs necessary to comply with the RSRs must be recorded on the land records and complied with. Once in place, the covenant not to sue provides protection in the event that the RSRs become more stringent, and in certain circumstances, prevent the DEP from seeking additional remediation in the event that previously undiscovered contamination is found. The DEP may enter into a covenant not to sue with current or prospective owners of contaminated property; however, the DEP will not enter into such covenants with parties responsible for causing such contamination.

A prospective purchaser or current owner requesting a covenant not to sue must demonstrate or certify that they did not cause the contamination, that they have no

affiliation with the person who caused the contamination, that they will redevelop the property for productive use or will continue productive use of the property, and that the property has been or will be remediated.

Covenants not to sue are frequently entered into under two statutory regimes, with subtle differences. If a covenant not to sue is entered into under C.G.S. § 22a-133aa, either a detailed written plan to remediate the property in accordance with the RSRs or a final report which documents the satisfactory completion of remedial actions at the property must be approved by the DEP before the covenant is entered. The cost for such a covenant is three percent of the value of the property, appraised *as if* uncontaminated. For a covenant not to sue issued pursuant to C.G.S. § 22a-133bb, either the DEP or a Licensed Environmental Professional must approve the cleanup plan or final remedial action report. No fee is required for this covenant.

A covenant not to sue is not fool-proof liability coverage. It does not bar claims that may be brought by third parties, such as toxic tort claims, nor does it relieve any responsibility for contamination caused after the covenant is entered into. Furthermore, if a party has acted with fraud in obtaining the covenant, it is of no effect.

DEP reports that 28 covenants not to sue have been issued under C.G.S. § 22a-133aa. Based on testimony heard by the Task Force, the fee associated with the covenant, which is based upon the uncontaminated property value, is a strong disincentive, especially given the limitations in the covenant itself. That is the covenant does not offer sufficient protection against third party claims.

5. The Licensed Environmental Professional (LEP) Program.

As has been mentioned previously, Connecticut is nearly unique in that it allows qualified environmental professionals to obtain licenses and, in certain circumstances, verify the completion of remediation of a particular site. Such individuals must go through testing and licensure requirements found in C.G.S. § 22a-133v. Once they have met these qualifications, however, these Licensed Environmental Professionals (or LEPs) may verify that an investigation has been performed at a specific property in accordance with prevailing standards and guidelines, and that pollution on such property has been remediated in accordance with the RSRs.

As with other licensed professionals (e.g., doctors and lawyers), LEPs are governed by an independent board, known as the LEP Board, which is comprised of eleven professionals. The LEP Board is responsible for ensuring that only qualified applicants are designated as LEPs and for conducting disciplinary proceedings against those LEPs who may not meet applicable standards.

In order to assure the integrity of LEP verifications, the DEP has the right to conduct an audit of any action authorized by law to be performed by an LEP. The LEP Verification Audit Program has been established to ensure that the verifications of the LEP are based on an appropriate understanding of the environmental conditions of the site and that the verification is in compliance with all applicable statutes and regulations, including the Remediation Standard Regulations.

D. OTHER STATE PROGRAMS.

1. Urban and Industrial Site Investment Tax Credit Program.

Under C.G.S. § 32-9t, this program allows a dollar-for-dollar corporate tax credit of up to 100% of a developer's investment to a maximum of \$100,000,000. The credit is available to businesses that build, expand, or rehabilitate new facilities. A minimum investment is required of either \$2 million or \$5 million depending on end use. An eligible project requires the approval of the Commissioner of DECD and is defined as an investment that will add significant new economic activity, increase employment and generate significant additional tax revenues to the municipality and the state. This tax credit program has limited utility to Brownfields as it must be revenue positive to the State. In addition, this credit is based upon job creation and may only be realized 4-10 years after the investment. Brownfield development has positive environmental, health, safety and social benefits that are not captured by this program.

2. Property Tax Abatement or Forgiveness Program (C.G.S. § 12-81r).

In general, this program allows a town to enter into an agreement with the owner of a property to abate the property tax due for a period of up to seven years if the project has been subject to a spill and the owner agrees to conduct appropriate site assessments and remediation. The abatement is only for the period of the remediation and redevelopment and it ceases upon the sale or transfer of the property unless the municipality consents. The Town also may forgive all or a portion of the principal balance and interest due on the property taxes for the benefit of any prospective purchaser who has obtained an environmental investigation or remediation plan approved by DEP or a licensed environmental professional and completes such plan for a property deemed by the municipality to be abandoned.

While this program is designed to provide the existing or new owner with property tax relief, this program is not well known or used. No one from a municipality who came before the Task Force or DECD acknowledged awareness and utilization of this program. Likely, municipalities are not aware of this program; likely, as well, municipalities are not readily predisposed to forgive taxes from a taxpayer as every tax dollar is valuable. Therefore, to provide an incentive for a municipality to use this program, the Town should be able to recapture some funding (i.e., state reimbursement) similar to the enterprise zone reimbursement set forth in C.G.S. § 32-9p and RCSA 32-9p-5.

How this program works in conjunction with C.G.S. § 12-63 is also not known. Under C.G.S. § 12-63, municipalities must tax all real property at 70% of its market value and municipal assessors cannot reduce the value of any non-residential property due to any polluted or environmentally hazardous condition if such owner caused the pollution or contamination, or if a successor in title acquired the property after any notice of the existence of any contamination was filed on the land records.

As with the Tax Increment Financing, C.G.S. § 12-81r places the burden on the municipality. And, given the constraints apparent in C.G.S. § 12-63, an owner of contaminated property does not receive any tax relief or encouragement to clean-up its property unless the Town consents to forego taxes. The property owner is faced with a paradoxical situation at a time when dollars are needed to address contamination. A municipality's hands are tied and an owner cannot receive funding since the conventional lender may very well evaluate the property as having no value. A great deal of burden is placed on the Town who is caught in a dilemma of wanting to keep the business in Town but also needing the local tax revenue. This burden is also disproportionate among the municipalities. In this regard, the municipalities should receive some state reimbursement.

3. Office of Responsible Growth (ORG).

In October of 2006, through Executive Order No. 15, Governor Rell created the Office of Responsible Growth ("ORG") within the Office of Policy and Management. Although responsible growth and Brownfield redevelopment are slightly different concepts, the two are nonetheless inextricably linked. Therefore, any efforts by the OBRD must also be carefully coordinated with the Office of Responsible Growth in order to avoid duplication of efforts.

One of the chief functions of the Office of Responsible Growth is the formation of an Interagency Steering Council, which will consist of the Commissioners of the Department of Economic and Community Development, Department of Environmental Protection, Department of Agriculture, Department of Transportation and the Department of Public Health as well as the Executive Directors of the Connecticut Housing Finance Authority and the Connecticut Development Authority. This Steering Council is designed to ensure that policy development and capital planning throughout the State will be well coordinated. Towards that end, the Office of Responsible Growth will also be updating Connecticut's Green Plan to better identify sensitive ecological areas and unique features.

In addition, the Office of Responsible Growth will reach out to the regions and municipalities. The Office of Responsible Growth will invite city and town officials to assist it in developing plans tailored to the specific needs of different parts of Connecticut. There will also be a greater emphasis on regional planning, and providing additional tools to municipalities to assist them with making complex planning decisions.

Finally, the Office of Responsible Growth will be reviewing how the residents of Connecticut live, work, and get back and forth from their homes and jobs. The Office of Responsible Growth will review transportation projects to determine where opportunities for additional mass transit may lie, while also looking into ways to provide housing that has ready access to such transit options. In addition, the Office of Responsible Growth will review how state funding of various projects impacts responsible growth.

While it is too early to determine what impact the Office of Responsible Growth will have on Brownfield redevelopment, it is clear that the Office will play a significant role in shaping the land use decisions of the state, including Brownfield reuse.

IV. RECOMMENDATIONS FOR EVOLUTIONARY CHANGE

Brownfields Reform for 2007

During the five months of study by the Task Force, three major themes emerged: (1) Organizational Restructuring and Timing; (2) Funding and Financing Needs; and (3) Regulatory Challenges and Liability Concerns. Overall, the speakers as well as the Task Force members acknowledge that a need exists to remove the disincentive to Brownfield redevelopment and make Brownfield redevelopment more attractive. Brownfield development is exceptionally difficult and heavily regulated, requiring a myriad of agencies, consultants and attorneys to make the project development, redevelopment or expansion a reality. Brownfield development is riddled with financial challenges and competing interests and requires a level of coordination, trust, and timing well beyond any greenfield site. Scope, schedule and budget are the key to a successful project and Brownfields development magnifies the uncertainties in these three areas.

Brownfield redevelopment in itself makes for sound social and public policy, but the marketplace may not respond given the cost, uncertainty, risk and fear of continued liability, and added time to develop the property. Brownfield projects have numerous public benefits and should be funded – in part, at least, with public money.

A culture change is also needed in the agencies as well as programmatic changes. Too often members of the public and private sector have perceived each other as adversaries. The enforcement-driven model, where agencies are perceived as holding a “stick”, has not led to Brownfield redevelopment. Brownfield redevelopment is also about taking risks and delving into an uncertain environment. While the public deserves a prudent and ethical approach to managing risk, public accountability creates an almost wholly risk averse and inflexible process that is cumbersome, time consuming and serves as a deterrent to the utilization of laudable state programs. The public at large and the various agencies need to understand that great successes will and can be achieved. However, failures, especially given the uncertainty of Brownfield development, will occur and are a natural part of the process. However, even with a failure, a beneficial step will likely be taken to identify and to address an environmental health and safety issue.

The developer, redeveloper or business who is seeking to expand should be a fully informed partner in the process rather than left to speculate as to the process, its timing and criteria. The property owner/developer needs to see and understand the process and work with and communicate with the agency. But the agency needs to be more open and transparent to the client developer or property owner. Above all else, whether the agency “client” is a white knight or a legacy property owner, that client today must not be treated as the “polluter” who is not worthy of being treated reasonably. The goal is to clean up contaminated properties and move them into service or prevent them from becoming idle and abandoned.

In brief, the Task Force is looking to create a culture of cooperation among and between: (1) the public sector agencies who oversee, fund and regulate; (2) the municipalities who are often left with abandoned properties, who lack resources, who don't know what resources are available and who often know what type of use makes sense for a property, even if it is a community development-type use, championed by a not for profit; and (3) the companies who want to stay or develop in the state. Education, funding, simplicity of programs and a proactive, welcoming culture is needed.

A. GENERAL RECOMMENDATIONS. The following general recommendations are guiding principles that underlie the more specific recommendations made below in each of the four critical areas.

Recommendation #A.1. *The Brownfield redevelopment process must be simplified, streamlined and transparent, with time frames shortened.*

Why? Because it takes too long. Developers, property owners and municipalities perceive that State involvement will only slow down the process and over complicate their initiative. There are too many programs on the books, with some that are no longer effective. If they don't work, they should be repealed and the State should start over.

Recommendation # A.2. *Brownfield funding and programs need coordination and a central "office" that developers, municipalities and not for profits can turn to that can guide the project through the funding, regulatory and permitting programs.*

Why? Currently, three agencies are involved without a primary coordinating unit. Each funding program has a different application and developers; particularly those developers coming in from out of state are left confused, lost, and frustrated by our state. In addition, other agencies with permitting and regulatory authority over a development (e.g. STC, DOT, etc.) need to be coordinated. Municipalities similarly have no primary point of contact to call when questions arise. The creation of the OBRD is a starting point to address this situation.

Recommendation # A.3. *Communication, outreach and marketing must be done proactively by the OBRD and the agencies.*

Why? The municipalities and the private sector don't know what programs are available or how to use them. Oftentimes, either entity would use the program if they knew it, understood it and could generally predict the outcome. More often than not, a broker or a White Knight contacts the municipality first. These constituencies need to have a better understanding of what the programs are and how they work.

Recommendation # A.4. *Need to incentivize the private sector and make it easier for them to develop, redevelop, reuse or expand on the state's Brownfields.*

Why? If the developer doesn't understand the process or doesn't receive the services and incentives needed to develop a Brownfield, the developer will go to a Greenfield or go to another state entirely. Agencies should not add to the complexity of the Brownfield development, but they often do. The entire program needs to be coordinated, simplified, and demystified.

Recommendation # A.5. *Need to provide funding and financial tools that can provide meaningful economic assistance.*

Why? Brownfields typically cost more to develop than open space, farmland, or greenfield sites. The costs of addressing soil and groundwater contamination through investigation, remediation and monitoring is exceptionally expensive and serves to preclude development as the return on investment is not the same as a property that does not have the same contamination obstacles. Brownfield sites do not match well to traditional return on investment criteria. Additionally, infrastructure repairs and improvements also contribute to the increased costs – asbestos abatement, lead paint, and PCBs all serve to increase the costs where the traditional income realization models do not provide a meaningful return in a reasonable period of time.

Recommendation #A.6. *Need to provide liability relief and protections to White Knights, existing property owners and municipalities who didn't cause the contamination and who undertake cleanup; however, parties that do not clean-up and are viable should remain liable.*

Why? Many properties are not developed because of the fear of falling into a liability abyss. Municipalities won't foreclose; White Knights won't take on a contaminated property; and existing property owners who want to expand don't, all from fear of endless clean-up costs and State and third party lawsuits. Property owners sit on property that is never developed; other times, property is left abandoned, back taxes are owed, or it is willed to the state or the municipality. Current generations of small manufacturers who may look to expand on their site, move elsewhere or forego expansion plans for fear of finding out what prior generations did on the property. Even if clean-up to state standards occurs, a party is exposed to third party claims (from abutting or downgradient property owners) or additional State claims if the regulations change or if the property use changes. However, relieving such parties from liability must also be balanced against the viable responsible party who continues to pollute (or has polluted) and who does nothing to address the contamination on the property. Such parties should not escape liability and, if viable, should be the subject of contribution actions by the parties who are cleaning up.

B. ORGANIZATIONAL RESTRUCTURING RECOMMENDATIONS

Recommendation #B.1: The Organization. *The Office of Brownfields Remediation and Development (OBRD) must serve as the institutional focal point to address Brownfield issues in the State of Connecticut. The Office must be the initial point of contact between the state agencies and the public. The Office must be a one-stop shop, which operates under a “relationship management” model of customer relations and staffed with personnel that have an understanding of the financing programs, regulatory requirements and services within the State of Connecticut. Most importantly, the OBRD staff members must be able to help the client through the network of agency personnel, paperwork and processes. Therefore, the office must be located within an existing implementing agency.*

Other elements of this recommendation include:

- a. The OBRD must serve as the coordinating entity among participating state agencies for Brownfields remediation and development.
- b. The participating state agencies, especially DECD, DEP and CDA/CBRA, as well as DPH and DOT, must dedicate staff specifically to the OBRD and to the Brownfields relationship. This requires endorsement of upper management and the involvement of senior managers from these state agencies in order to ensure effective coordination among the agencies.
- c. There must be an infusion of new dollars for not only the OBRD, but also DECD and DEP to ensure the success of this independent Brownfields initiative.

Why? The overriding goal of the Brownfields Task Force is to create a process which allows for the remediation and redevelopment of Brownfields in the fastest time, with the least risk, at the lowest cost, with the highest quality outcome. To that end, it is necessary to create an organizational structure that embraces and advances this goal. The Task Force has listened to the testimony of many stakeholders including developers, bankers, environmental lawyers, environmental consultants, economic development executives, manufacturers and municipal leaders. Members of the Task Force have compared the organizations which have evolved in other states in an effort to propose the most appropriate organizational structure for Connecticut at this time. The Brownfields Task Force believes that the OBRD must be a separate office reporting directly to the Governor; however, given the timing and financial constraints, in the short term, the OBRD should be located within an existing implementing agency.

Recommendation #B.2: Organization Specifics. *The OBRD should be provided the resources in terms of funding and staffing so as to effectively implement the State’s Brownfield programs and must be located within an existing implementing agency, DECD.*

Other elements of the recommendation include:

- a. OBRD is currently operating within the Office of Infrastructure and Real Estate (OIRE) of DECD. This office must stand alone, with an experienced professional staff. Most importantly, it should maintain direct contact with the Commissioner of DECD.
- b. DECD shall initially staff the OBRD with two employees having experience in project financing and management and two support employees, one of whom has experience in the coordination and processing of Brownfields applications and one of whom has experience with marketing programs. Future staffing will need to be addressed as the workload of the OBRD increases.
- c. DECD will provide such other staffing and project support as required.
- d. Each of the other participating agencies (i.e. DEP, CDA/CBRA, DPH, DOT and the Office of Responsible Growth) will provide necessary senior management level and senior staff level personnel, as required, to create policy and coordinate projects.
- e. The OBRD may be supported by a team of volunteers (the “Volunteer Team”) with appropriate technical, engineering and managerial skills in the area of Brownfields remediation and development non as-needed basis. The OBRD should avoid the appearance or perception of any conflict of interest when seeking assistance from any volunteers. The role of the volunteer shall not include reviewing the merits of any application for funding through any state program.

Why? The Task Force believes that, ideally, the OBRD would be a separate agency reporting directly to the Governor. It recognizes, however, the enormous cost and lengthy start-up time associated with such an endeavor. Accordingly, it is the Task Force’s opinion that OBRD should be located within an implementing State agency. DECD appears to be the logical choice since it is an implementing department and has managers and staff experienced with the redevelopment of Brownfields. DECD already has a working relationship with other State, regional and municipal economic development agencies.

Recommendation #B.3: Inter-Agency Coordination. *The OBRD will serve as the central point for coordination of Brownfields policy, regulatory and administrative reforms and program execution among the participating agencies. A Memorandum of Understanding should be prepared and executed by the key participating state agencies including DECD, DEP, CDA/CBRA and ORG; the MOU should ensure that tracking of all Brownfield development and remediation projects or activities are coordinated through OBRD. The Memorandum of Understanding (MOU) should detail the relationship between and among the OBRD and the state agencies.*

Other elements of the recommendation include:

- a. Senior managers from each of the participating state agencies should meet at least monthly with other appropriate state agency personnel to (i) coordinate high level issues regarding current projects, (ii) critique and suggest changes to existing Brownfields programs, (iii) discuss and recommend regulatory and/or statutory changes to streamline the Brownfields process, and (iv) coordinate with the Office of Responsible Growth.
- b. Senior staff level personnel should meet throughout the month to: (i) evaluate and coordinate specific Brownfields projects, (ii) address specific Brownfields issues with stakeholders, (iii) review overall intake, case management and coordination issues, and (iv) develop and execute an education and outreach program.
- c. The OBRD shall coordinate with the other permitting and regulatory agencies having jurisdiction over Brownfield development in order to foster a coordinated approach and timely review of any application.

Why? Currently, inter-agency cooperation works well on large, high priority projects backed by the Governor's Office and the General Assembly; however, there is a need for greater collaboration on more routine projects, which involve the overwhelming majority of the State's Brownfield sites. A more formal arrangement is required among the state agencies charged with responsibilities for Brownfield's evaluation, monitoring, remediation and redevelopment. Clear lines of inter-agency authority and responsibilities must be drawn to encourage a culture of collaboration and to take advantage of each agency's unique expertise.

Recommendation #B.4: Implementing Funding. *The OBRD should review, coordinate and administer the funding programs within the respective authority of each agency recommended in section C of this Report. The Brownfields funding programs should be streamlined and transparent and published procedures developed for the funding programs, including expediting the application and reward process. The specific expertise of each agency needs to be clearly delineated and utilized in order to effectively operate a comprehensive Brownfields program.*

Why? The funding programs need coordination among the agencies. Each agency has a specific role to play and those roles should be clearly defined. DECD has the expertise necessary to review a proposal and evaluate. The economic and community development impacts, the overall project viability, the financing and budget projections, project viability, the credit worthiness (if applicable) of the applicant, and can assure that certain performance standards may be met. CBRA similarly can provide such analysis for its programs. DEP evaluates the environmental regulatory aspects of the project and should review and evaluate all Phase Is, IIs, IIIs and Remedial Action Plans. Neither DECD nor CDA have the qualifications, background or experience to review environmental proposals or reports for compliance with the environmental regulatory criteria. DEP

hires the environmental analysts and engineers; the other agencies, especially OBRD, should be skilled in real estate and project development, financing, budgeting, accounting, marketing and public administration. Together, project decisions can be made and meritorious applications ultimately selected and funded.

Recommendation #B5: Education and Outreach. *A coordinated educational, marketing and outreach program should be developed:*

The elements of this recommendation include:

- a. A coordinated education and outreach program should be developed. The outreach team should consist of members of DECD, CDA/CBRA, DEP, OPM and the Volunteer Team. The outreach and education program should be geared to a variety of audiences, including: property owners, developers, municipalities, regional organizations, economic development agencies, and nonprofit corporations. OBRD workshops should be coordinated with the existing workshop schedules sponsored by CBIA, CCM, COST, EPOC, NBA, and CEDAS. Priority should be given to workshops for municipalities, economic development agencies and regional economic development authorities.
- b. A marketing campaign should be developed and include the following components: (a) OBRD mailing to all municipal Chief Elected Officials and economic development and planning directors, (b) OBRD coordination with CCM and CBIA mailings and electronic notifications, (c) OBRD website, (d) participation in state, regional and national Brownfields conferences, and (e) featured properties initiative.
- c. Consideration should be given to hiring a marketing consultant to most effectively market the new state Brownfields initiative.
- d. A website has been developed and will be maintained by the OBRD. This website should serve as the primary medium for information regarding all aspects of the State's Brownfields program. The website should be refined by adding: (a) an alert feature, (b) improved linkages to DEP, CBIA, DOT, DPH and EPA, and (c) interactive educational tools.
- e. A Brownfields hotline has been established at the OBRD. It should be staffed by professionals who have an understanding of development and financing programs as well as regulatory requirements related to Brownfields issues.

Why? There was universal consensus among the speakers before the Brownfields Task Force regarding the critical role which education and outreach will play in the State's new Brownfields initiative. Brownfields remediation and development involves a complex maze of financing programs, regulatory requirements and transactional issues.

Insufficient knowledge will result in lost opportunities for municipalities, economic development agencies, business owners and private developers. Effective education and outreach by OBRD will go a long way at nominal cost to advancing the goal of Brownfields remediation and development.

Recommendation #B.6: (Additional OBRD Activities). *The OBRD should concentrate on the following activities:*

1. Establish a strong linkage between Brownfields development and the Governor's Smart Growth initiative by collaborating with the Office of Responsible Growth.
2. Identify, expand and encourage the growth and development of regional economic development organization to work with municipalities, manage projects, and coordinate funding and service delivery.
3. Create an annual report based on measurable standards which assesses the activities of the OBRD including its efforts to achieve the goals set forth in this Task Force Report. The annual report should be sent to the Governor, the Commerce and Environment Committees of the General Assembly, EPOC, NBA, CBIA, CCM, COST and CEDAS.
4. Identify state Brownfield opportunities.
5. Launch the pilot program with the four municipalities as required by P.A. 06-184 upon receipt of funding.
6. The OBRD, through DEP, shall maintain a database of all institutional controls at sites throughout the state. These shall include ELURs and Engineering Controls. This information should be searchable on the state GIS system.

Recommendation #B.7: *OBRD, DEP and DECD require staffing and new organizational funding to implement the various programs and initiatives. We recommend:*

- a. \$1,500,000 to DECD on an annual basis (adjusted annually for employee compensation and benefits increases) to staff and operate the OBRD; specifically, the staffing recommendation is two senior staff level employees having experience in large scale project financing and managing and two support staff level employees, one of whom has experience in the coordination and processing of Brownfields applications and one of whom has experience with outreach and educational programs.
- b. \$1,500,000 to DEP on an annual basis (adjusted annually for employee compensation and benefits increases) to hire new personnel dedicated

solely to the Brownfields initiatives. The Task Force recommends the hiring of at least one new supervisor and six new staff level professionals.

- c. \$500,000 to DECD for OBRD to implement marketing outreach and education programs.

Why? The creation of the OBRD and the implementation of its goals cannot be achieved without the financial commitment of the State. The State agencies, which currently oversee the various components of the Brownfields remediation and development process, are doing a remarkable job given the budgetary and staffing constraints in which they operate, however, new funding is required to promote and implement this independent Brownfields initiative.

C. BROWNFIELD PROGRAM FUNDING

Recommendation #C.1: *To provide a fund that is capitalized in the amount of \$ 75 million, with an additional stream of funds in the amount of \$ 25 million per year for the next 5 years and with an annual rollover of fund balances.*

Why? Too much uncertainty exists for the small and mid sized projects as to whether the programs are funded and have funds available to them. The larger projects have sufficient support to weather the State Bond Commission approval process and receive grant funds when they need it. Other states began successful Brownfield initiatives with a fund that is capitalized and marketed as such. For example, in Ohio, in 2000, a \$200 million bond issuance was approved for a Brownfield clean up, with 80% going to a competitive grant program (available to private developers based upon a scoring of economic benefit and environmental improvement and with a maximum award of \$3 million, with a 25% match) and 20% to a discretionary program (available to municipalities). Pennsylvania sets aside funding annually and, in 2004, it set aside \$48 million. With a \$30 million appropriation from the state legislature years ago, Massachusetts launched its Brownfield loan and special grant program. While \$75 million sounds and is significant, the costs associated with remediating a Brownfield is also significant and, in Connecticut, thousands of such sites exist. Such a commitment of funds would send a strong message that the State is looking for good economic and community development and is looking to clean up the state's polluted properties that would otherwise lay abandoned and to avert any public health threats that exist as a result of these stagnating properties.

Therefore, the Task Force recommends that a fund be capitalized that will continue to exist and be funded at a set level for another 5 years. After 5 years, the funding needs to be reevaluated to determine whether it is sufficient. Initial and annual capitalization could be through a direct appropriation or a State Bond Commission initial block for Brownfields.

Long term funding through a dedicated revenue stream is of paramount importance. Other states fund their programs through other environmentally beneficial programs such as bottle deposits and additional taxes on industry, fuel, and motor vehicles. Similarly,

the Task Force looked at whether funding should be through increasing fees for DEP programs (e.g., covenant not to sue) or enforcement initiatives. Experience and comments relating to the covenant not to sue shows that the cost is a disincentive especially given the lack of certainty and other regulatory obstacles that may continue to exist. Additionally, enforcement initiatives may not provide the regular stability needed for these long term projects and may serve to create a philosophical approach that is a disincentive to compromise.

Brownfield investigation and remediation is a long term initiative as it takes time to address the environmental condition of a site; therefore, the funding needs to be long-term, with a dedicated and reliable revenue source. In recognition of other states' programs, such revenue streams could also include: (a) DEP program entry fees; (b) an increased tax on the purchaser of "gas guzzlers"; or (c) a portion of the existing state conveyance tax on real estate transactions. Moreover, the fund would be partially revolving and self-funded through the sale of such properties or the repayment of loans, which is explained further below.

Recommendation #C.2: *Fund \$16 million for the pilot municipalities established under PA 06-184.*

Why? Public Act 06-184 created a pilot program for four municipalities. This program was not funded. A number of initiatives were created in this Act for the benefit of municipalities. While the recommendations offered by the Task Force incorporate many of the elements established for the pilot municipalities, the pilot programs should be funded separately to determine how such specific programs work with a dedicated revenue stream and motivated municipalities.

Recommendation #C.3: *Collapse the Urban Site Remedial Action Program, the SCRIPF program and the EARLF fund and create three new programs to be funded out of the fund established in Recommendation #1. Any existing fund balances will be transferred to this new program. The Urban Site Remedial Action Program could be retained and revamped to continue and allow case-by-case funding for the very large economic development projects.*

Why? The marketplace has not responded to the existing state programs, they are too limited in the types of projects funded, who is a qualified recipient, and cumbersome to implement.

Proposal: Three new programs with a broader eligibility that funds a wider array of properties, activities and end-uses should be created along with a program approval process that is streamlined, non-redundant, standardized, transparent and predictable. For any of the programs, DECD or CDA/CBRA, as appropriate, reviews the economic, job and community enhancement aspects of the development and DEP reviews and approves the proposal for the environmental investigation and remediation activities before any funding is approved. Roles need to be clearly defined and redundancy eliminated. Additionally, DECD will retain oversight of its existing development

programs and will try to package Brownfield properties with these programs as well in order to foster Brownfield development. CDA/CBRA will continue to administer the TIF program as modified as well as will provide loan guarantees and will coordinate with OBRD as to whether their programs are appropriate for any given project.

First Program: Municipal and Regional Economic and Community Development Grant Program

***Recommendation #C.4:** Create a “Remedial Action and Redevelopment Revolving Municipal Fund” within \$32.5 million of the capitalization to provide municipalities, economic development authorities, regional economic development authorities, or qualified nonprofit, community 501(c)(3)s with the funding necessary to foreclose, develop, investigate, remediate and reuse Brownfield properties within their towns and regions. The scope of the grants would include the costs of investigation, assessment, remediation, abatement, hazardous materials or waste disposal, long term groundwater or natural attenuation monitoring, costs associated with an environmental land use restriction, attorneys fees, planning, engineering and environmental consulting costs, and building and structural issues, including demolition, asbestos abatement, PCB removal, contaminated wood or paint removal and other infrastructure remedial activities. A certain percentage could be set aside for large versus small municipalities and the nonprofits so there is parity among the recipients.*

Other elements of this recommendation:

- (a) The grants are to be awarded on a competitive basis, based at a minimum on an annual RFP, issued on June 1 each year, with the first RFP to be issued on June 1, 2008, and awards to be made by November 1. The frequency may increase at the discretion of the agency depending upon the number of applicants. Awards should be scored and made based upon a series of factors deemed relevant by the OBRD including but not limited to: the intended economic and community development opportunity such reuse and redevelopment may provide; viability of project; contribution, if any, to the community’s tax base; demonstrated need for the development; track record of the applicant to efficiently and effectively manage the funds and the development; the length of time the property has been abandoned; length of time taxes are owed and the projected revenues that may be restored to the community; the overall municipal plan for development and environmental and public health benefits. All such factors considered by the OBRD should be identified in the application so that the applicant may respond to each factor.
- (b) If and when the municipality, economic development authority or regional economic development authority or nonprofit develops and sells the property, any monies received are returned to the fund, minus 20 %, which the municipality, economic development authority or regional economic

development authority or nonprofit retains to cover its costs of oversight, administration, development and, if applicable, lost tax revenue.

- (c) The grant recipient should be shielded from third party or state liability, provided the purchaser did not cause/contribute to the contamination and is not a person/party related to the owner or operator who originally caused/contributed to the contamination. Such liability relief should be similar to those provided in section 4 of Public Act 06-184.
- (d) Allow the municipality, economic development authority or regional economic development authority to make low-interest loans to the redeveloper, if the future reuse is known and an agreement with the redeveloper is in place and the private party is a co-applicant. The loans are then returned to the fund, minus 20 %, which the municipality retains. If the municipality provides a loan, such loan may be secured by a state or municipal lien on the property.
- (e) Allow the proceeds to be used for any development deemed appropriate by applicant – including manufacturing, retail, residential, municipal, educational, parks, community centers, and mixed use.
- (f) All grant recipients are encouraged to enter a voluntary program for Brownfields remediation. Allow the municipality, economic development authority or regional economic development authority to acquire and convey its interest in the property without it or the subsequent purchaser incurring any liability under the Transfer Act (or otherwise) provided that the municipality (etc.) itself didn't cause the contamination, and that the property is remediated in accordance with applicable State standards.
- (g) Each project funded through this program is eligible for up to \$4 million. If the eligible costs exceed \$4 million, then DECD may request that such project be funded directly through State Bond Commission proceeds.

Why? Within each municipality, there are numerous under and unutilized properties. Whether a market demand exists for them cannot be truly measured largely due to the cost of the cleanup. Municipalities themselves may be the only catalyst for developing a Brownfield property. They are the ones that are left with the unperforming property and often know what properties have been abandoned or are unutilized in their community. They also know whether the property is the subject of inquiry from brokers or potential buyers and whether the redevelopment fits within the plan for the development of the community. The recommendations set forth above are designed to promote such development and can fill a needed gap in the existing funding programs.

Other elements of the recommendation include exempting such properties from the Transfer Act as an imbalance currently exists. When the grant recipient acquires property, the transaction is excluded; when the municipality transfers the property, it is

included. If a grant recipient is cleaning up the property under the program established here, the transaction by the grant recipient to the new owner should be exempt from the Transfer Act similar to the exemption established in section 3 of Public Act 06-184. Additionally, the grant recipient should not be liable at all for the property to the state or third parties as long as it did not cause or contribute to the contamination. The liability protection established in section 4 of Public Act 06-184 should be extended to these recipients.

Second Program: Targeted Brownfield Development Loan Fund

***Recommendation #C.5:** Create a Targeted Brownfield Development Loan Fund within the \$32.5 million of the capitalization available to White Knights, who have no direct or related party liability for the site conditions (the “White Knight”), or existing property owners (“Legacy Owners”) who (1) are currently in good standing and otherwise compliant with the DEP regulatory programs; (2) demonstrate an inability to fund the investigation and clean up themselves; and (3) cannot retain or expand jobs due to the costs associated with the investigating and remediating the contamination.*

Elements of this recommendation include:

- (a) Low interest loans are provided to the White Knight or Legacy Property Owner who seeks to develop property for purposes of retaining jobs or expanding jobs in the state or for development of housing to serve the needs of the first time home buyer. Loans will be provided based upon project merit and viability, the economic and community development opportunity, municipal support, contribution to the community’s tax base, number of jobs, track record of the applicant, compliance history and ability to pay. The White Knight must have an option to purchase or lease the Property in order to qualify.
- (b) A White Knight must be subject to either the Transfer Act or the DEP Voluntary Program; a Legacy Property Owner must enter the DEP Voluntary Program.
- (c) The loan will be no interest until the site has been remediated, in accordance with the criteria established for a “Form IV” filing set forth in C.G.S. § 22a-134(12); with a small interest accruing thereafter. The term of the loan will be for no longer than 20 years.
- (d) If the property is sold before the loan has been paid, the loan is immediately payable, with interest, unless otherwise agreed to by DECD/CDA/CBRA. The goal, however, is to make the loan subject to performance requirements and the commitments to stay or retain jobs, within the discretion of the relevant funding authority.

- (e) The loans could be used for any purpose, including the present or past costs of investigation, assessment, remediation, abatement, hazardous materials or waste disposal, long term groundwater or natural attenuation monitoring, costs associated with an environmental land use restriction, attorneys fees, planning, engineering and environmental consulting costs, and building and structural issues, including demolition, asbestos abatement, PCB removal, contaminated wood or paint removal and other infrastructure remedial activities.
- (f) The loans are available to manufacturing, retail, residential or mixed use developments, expansions or reuses.
- (g) The recipient must agree that the consultant will be a Licensed Environmental Professional and the report(s) generated by the loans will be verified to the state.
- (h) Critical to obtaining the loan is a redevelopment plan that describes how the property will be used or reused for commercial, industrial or mixed use development that results in jobs and private investment in the community. If the loan is for residential development, the developer must agree that the development will provide the housing needs reasonable and appropriate for the first time home buyer or the recent college graduate looking to stay in Connecticut.
- (i) The loan program is available to all qualified new and existing property owners. The commercial/industrial/mixed use loan recipient must agree that during the term of the loan, it will retain or add jobs, unless otherwise agreed to by DECD/CDA/CBRA. The residential developer must agree that the loan will be retired upon sale of the units unless the development will be apartments.
- (j) Each loan recipient may be eligible for up to \$2 million per year up to two years, subject to agency underwriting and reasonable and customary requirements to assure performance. If additional funds are needed, DECD may recommend that the project be funded through the State Bond Commission.
- (k) The loan must be subject to reasonable and customary security requirements, such as a state lien on the property.

Why? The private sector requires access to low or no interest loan programs so that the early costs of investigation and remediation are funded. Typically, these costs do not fit into the typical loan provided by banks or other investment groups as the underwriting is not achieved. Some type of bridge financing is needed on a low risk basis. This new program would be available as well to a wider range of developers and would fill a gap that is needed to provide assistance to the legacy property owner as well as the White

Knight. It would also support any type of economic and community development – retail, residential, commercial and industrial, or mixed use. Additionally, the funds would support a broader array of environmental issues – exterior (investigation, remediation, monitoring) and monitoring (asbestos, lead paint, structural issues or indoor air monitoring).

Funding to existing property owners through this second program (and the third) result in Brownfields prevention. The current Brownfield funding programs for the state are not designed to prevent properties from becoming Brownfields; rather, they are designed to provide some flexibility to new property owners. As a result, property owners with limited abilities to pay for remediation are not able to meaningfully participate in a state program designed for site remediation and their properties go unremediated and not readily saleable in the marketplace. The result inevitably is likely to be business closure and property abandonment. The inconsistent approach in the state’s framework needs correction. That is, right now, the only way for funding to be available is if an existing company goes out of business.

The state’s Brownfield programs value vacant, abandoned properties over those that are in use but with a limited ability to fund the costs of cleanup. A program should be developed for these existing property owners to thwart the downward spiral to a Brownfields. Companies wishing to participate in such a program would have to demonstrate a limited ability to pay the necessary costs of remediation and would also have to agree to remain in Connecticut. These companies should be eligible for loans and potential tax credits and potentially some limited liability protection. The approach in this second program (as well as the third) also closes the gap and is generally consistent with section 9 of Public Act 06-184, which provided that for certain Brownfields and manufacturing establishments, existing owners may be eligible for any available remediation funds as long as they did not knowingly cause injury to human health or the environment and the property owner has never been found guilty of knowingly or willfully violating an environmental law. However, the definitions should be consistent in order to support a uniform and understandable policy. Additionally, precedent exists for such a program in other states. For example, in Wisconsin, responsible parties are statutorily protected if they elect to investigate and clean up their entire property. Either DECD or CDA/CBRA through the OBRD, administers this program and would establish set criteria for the applicant. This program would be administered on a first-come, first-served basis.

Third program: Small Business Brownfield Grant Assistance

Recommendation #C.6: *Similar to the loan program, The Small Business Brownfield Grant program is funded through \$5 million from the initial capitalization and is available to White Knights, who have no direct or related party liability for the site conditions (the “White Knight”), or existing property owners (“Legacy Owners”).*

Elements of this program include:

- (a) Grants are provided to qualified “start-ups” or small businesses to fund the costs of investigation and assessment up to \$50,000.
- (b) Grants are provided to qualified small businesses to fund up to \$300,000 of the costs associated with investigating and remediating a property. If a grant is provided, then remediation may be required to meet residential standards unless the property is zoned commercial/industrial.
- (c) The qualified small business must employ less than 50 employees. Grants are also awarded on the basis of ability to pay, and, if an existing business, its compliance history. Larger, well capitalized companies are not eligible for these grants. A start-up could range from a flower shop to a biotech business.
- (d) Grants can be awarded on a first-come, first-served basis.
- (e) The recipient must agree that the consultant will be a Licensed Environmental Professional the report(s) generated by the grants will be verified to the state and the recipient will enter one of the DEP programs.
- (f) Grants will be awarded to fund the associated and eligible costs of the investigation and remediation. Once a recipient has been approved for a grant, it will be disbursed based upon the recipient meeting performance-based standards and upon presentment of the bills, invoices and other documentation evidencing that such work has been performed.
- (g) Any grant recipient that is a Legacy Property Owner shall agree to remain on the property for ten years at current staffing levels unless otherwise agreed to by OBRD in writing. If the legacy property owner transfers its interest in the property prior to the ten years, then the state shall be reimbursed the full amount of the grant.
- (h) Allow the proceeds to be used for any development deemed appropriate by applicant – including manufacturing, retail, or mixed use.

Why? Small businesses are often community based and are appropriate for these types of properties. Without some financial assistance, these smaller businesses would not risk entering a Brownfield site for development. Existing businesses will not expand and existing jobs lost. The amounts recommended are modeled upon DECD’s Dry Cleaners program. DECD or CDA/CBRA through the OBRD administers this program.

CDA/CBRA PROGRAMS

Recommendation #C.7: CDA/CBRA Support. *CDA/CBRA should be provided with \$5 million of the capitalization in order to support the transaction and underwriting costs for the expansion of the two CDA/CBRA programs identified below.*

Why? CDA/CBRA thresholds and programs could and should be expanded; however, the cost of these programs undermine their utilization to the smaller and midsized projects. An additional \$5 million could provide the necessary support for program expansion.

Recommendation #C.8: Tax Increment Financing. *Provide additional incentives to cover transaction costs to the TIF program in order to make a minimum \$250,000 TIF feasible and expand its scope to include different types of projects, including residential and mixed use.*

Elements include:

- (a) Modification to the common interest community act to require that if a Brownfield redevelopment mill condominium or apartment conversion is to be funded through the TIF, then the common interest community/condominium will receive the tax assessment from the municipality for each unit and the association will be responsible for paying all the real estate taxes for the community. Alternatively, the apartment complex owner will be paying the taxes on the complex.
- (b) Allow the Brownfield TIF to be repaid through a combination of sales tax generated by the project, if any, and real estate property tax.
- (c) Provide some form of reimbursement to the municipality that supports the TIF. For example, allow only a certain percentage of the TIF to support the bonds and allow the municipality to receive some tax payment or other type of host community benefit.

Why? The TIF program appears to work well but is limited in scope. It does not work well for a residential conversion or mixed use, when residential development may be a large component. Many mills are converted to condo lofts or apartments that may have steady stream of taxes paid by many taxpayers. Because a TIF only works if there is one single stream of tax, modification to the common interest community statutes would allow for the association to provide that single source of property taxes needed to support the TIF. Municipalities are reluctant to have the TIF be utilized because it means that they are foregoing property taxes while being required to provide services once the property is developed. While arguments may be made as to the benefits inuring to the municipal host community from the redevelopment, the municipality may need some incentives to support a TIF financed project.

Recommendation #C.9: Expand the Loan Guarantee Program. *Revise and expand the Loan Guarantee program for guarantees to private lenders to include Brownfields redevelopment as an eligible use.*

Elements include:

- (a) Target primary lenders that finance Brownfield redevelopment and provide coverage of up to 30 % of the loan.
- (b) Cover losses from default due to environmental causes for up to five years, but the CDA/CBRA could approve an application to renew or issue a new guarantee for up to five additional years for loans and/or projects that demonstrate continued prospects for success.

Why? Task force members heard arguments that a loan guarantee program would provide considerable utility for financing Brownfield redevelopment. CDA/CBRA currently has a program in place, but it is not used for Brownfields as it is not sufficiently capitalized. Additional support to CDA/CBRA is needed to target and bridge a gap in financing alternatives.

D. CHANGES TO THE REGULATORY AND LIABILITY PROGRAMS

Recommendation #D.1: Develop a Voluntary Brownfield Remediation Program.

Authorize the DEP to develop a new voluntary program that would provide liability relief to individuals redeveloping Brownfield sites.

Why? The current regime of voluntary remediation programs in Connecticut (namely those found at Conn. Gen. Stat. §§ 22a-133x and 22a-133y) provide minor incentives to current property owners to remediate their sites, mostly by allowing site owners flexibility in terms of how the remediation is to be conducted. These programs are not designed, however, to address the unique circumstance where a “white knight” developer or a site owner who is not responsible for the contamination on a site wishes to redevelop a contaminated parcel and bring it into productive reuse. Moreover, through the operation of the Transfer Act and other state remedial laws, such a developer would be responsible not only for the remediation of the site her or she wishes to develop, but also would be responsible to chase any contamination emanating from the site to other parcels. Put another way, a given developer may be willing to sign on to clean up a particular parcel (thereby providing a public good), but will be unwilling to investigate and remediate adjacent parcels over which they have no control.

In addition, the Transfer Act and other remedial statutes lack hard deadlines for the completion of remediation. As such, contaminated properties can spend years in the system and not be fully remediated. Unlike traditional remediation projects, however, Brownfield projects often have tight deadlines associated with them as developers want to get such sites back into the stream of commerce as quickly as possible in order to recoup on their investment. As such, the Brownfield redeveloper frequently has incentive to complete the remediation as quickly as possible, which provides obvious benefits to the State.

The reality is that despite clear-cut deadline requirements and even in the absence of tailored programs or state funding, quick and thorough Brownfield development can

and does happen in the State, provided that the economics of a project justify the redevelopment of the contaminated parcel. Unfortunately, the testimony heard by the Task Force indicates that these success stories are relatively few and far between in Connecticut. However, it is believed that with appropriate liability relief in place, the private sector would have additional tools with which to bring about Brownfield redevelopment. More importantly, because such tools would allow the private sector to address these issues without government funding, such liability relief can assist Brownfield redevelopment for a minimal cost.

Proposal: Develop two voluntary Brownfield remediation programs along the lines of other voluntary clean up programs in the State. The first such Brownfield program would be available to “White Knight” entities who had no role in causing the contamination found at a site. Elements of such a program would include:

1. The program would be available for the remediation of Brownfields, as that term is defined in section 8 of Public Act 06-184, for which there is no private, readily accessible, financially viable potentially responsible party.
2. The program would be available only to redevelopers of Brownfields who qualify as a “Volunteer,” meaning that they “did not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste and such person is not a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable under Conn. Gen. Stat. §§ 22a-432, 22a-433, 22a-451 or 22a-452.”
3. The program would be designed such that the Volunteer and DEP personnel would meet to negotiate an upfront “Brownfield Remediation Agreement.” Such an agreement would be a fairly standardized form, such as those used in states such as New Jersey or Pennsylvania, similar to the way that ELURs in the state of Connecticut are standardized.
4. The Brownfield Remediation Agreement would provide liability protection for the Volunteer seeking to develop the site, in exchange for certainty of timing and scope of cleanup.
5. Pursuant to the Brownfield Remediation Agreement, the Volunteer would have to establish deadlines for the completion of site investigation, remedial activities, and the submittal of a verification (or DEP approval) for a site. The scope of the remediation would also be included in the Brownfield Remediation Agreement.
6. In exchange for the Volunteer’s signature on the Brownfield Remediation Agreement, the DEP would provide the Volunteer with:

- a. A covenant not to sue (starting at time of submittal of remedial action plan);
- b. An exemption from remediation of offsite contamination
- c. An exemption from natural resource damage claims; and
- d. An agreement that no additional remediation orders will be issued by the DEP provided that the remedial action plan is being followed and that the Volunteer has not engaged in fraudulent misrepresentations to the DEP.

The second Voluntary Brownfield Program would provide owners of contaminated property with some potential regulatory relief. Such a program would allow for Legacy Property Owners of contaminated properties, who demonstrate a limited ability to pay the costs of remediation, with certain protections from liability. While these protections would not be as broad as those described in greater detail above, they would provide the regulated community with some flexibility in how it approaches Brownfield redevelopment. The elements of such a program would entail the following:

- 1. A recognition that the general rule is that the “polluter pays” for remediation in Connecticut.
- 2. A further recognition that Connecticut has many sites where the contamination results from companies following accepted, or even mandated, practices during the course of their histories.
- 3. Companies wishing to participate in such a program would have to demonstrate a limited ability to pay to the OBRD and/or the DEP the necessary costs of remediation.
- 4. Companies wishing to participate in such a program would also have to agree to remain in Connecticut, at current job levels, for a period of at least 10 years.
- 5. Sites owned by such companies would be eligible to participate in the voluntary Brownfield program described above; however, such participation would be limited.
- 6. The state would provide the site owner with a covenant not to sue at no cost and an agreement that no additional remediation orders will be issued by the DEP provided that the remedial action plan is being followed and that the Volunteer has not engaged in fraudulent misrepresentations to the DEP.
- 7. This program would not apply to prior certifying parties under the Transfer Act.

8. The State would place a lien on the property in question until such time as all of the owner's obligations under the agreement had been met.

Recommendation #D.2: DEP Should Provide Careful Consideration in Revising the Remediation Standard Regulations (RSRs). *As it revises the RSRs in 2007, the DEP should pay careful attention to how those revisions will impact Brownfield redevelopment.*

Why? The RSRs are currently subject to review by a DEP advisory committee, and it is anticipated that the DEP will be promulgating amendments to the RSRs in the first half of 2007. Because the changes to the RSRs have not yet been finalized by DEP, it would be premature for the Task Force to comment on those changes. It should be noted, however, that because the RSRs impact every remediation in the state, the revision of these regulations will have a far-reaching impact on Brownfield redevelopment in the state.

Accordingly, the Task Force would suggest that the DEP consider the following when revising its RSRs:

1. To the maximum extent practical, the RSRs should be self-executing and should allow LEPs to have a clear understanding of what is required.
2. Put another way, the revisions to the RSRs should be done with an eye towards achieving finality and certainty as quickly as possible while continuing to ensure the protection of human health and the environment.
3. As it amends the RSRs, the DEP should seek to address how it wishes to handle groundwater contamination in GB areas where there are no current plans to remediate such groundwater to GA standards. For example, the DEP may wish to revisit pollutant mobility criteria, since the current pollutant mobility criteria may not take into account the true risks of exposure for groundwater in GB areas.
4. Groundwater should be reclassified statewide so that the classifications are based on current groundwater usage and contamination levels, not historic practices.
5. As it amends the RSRs, the DEP should consider how it wishes to handle properties which are contaminated by upgradient contamination only. The DEP should further examine the RSRs to see if they can be amended so that if the sole cause of a property's exceedence of the RSRs is due to upgradient contamination, an LEP can nonetheless verify the property for RSR compliance.
6. As it amends the RSRs, the DEP should create an "urban fill" designation that is protective of human health and the environment but recognizes the existence of historical and widespread filling practices that occurred as part of the state's historical development.

Recommendation #D.3 Provide Finality to LEP Certifications. *Modify the Transfer Act, specifically section 22a-134a, to include language that would provide for verifications to be approved by the Commissioner within a set period of time, or else have the Commissioner notify the certifying party that an audit would be conducted.*

Why? Under current regulations, sites that are currently processed through the Connecticut Transfer Act and verified by an LEP are subject to an audit by DEP for an unspecified period of time. In other words, the DEP is always permitted to audit the LEP verification for a site, without limitation. The Task Force heard repeated testimony from the regulated community that the open-ended nature of the audit process causes a lack of finality for sites and may result in lenders being unwilling to provide private financing for some sites.

The audit program under the Transfer Act contrasts sharply with certain voluntary programs enacted by the State. For example, sites which are remediated voluntarily pursuant to Conn. Gen. Stat. §22a-133y have a fixed period of time in which audits may be conducted. Under the terms of that program, the following timelines are in place:

1. Final remedial action reports submitted by LEPs are deemed to be final unless the DEP indicates within 60 days that an audit is warranted.
2. Audits must be conducted within six months of DEP's determination that an audit is warranted.

The Task Force recognizes that such timelines are unworkable with the Transfer Act program since the number of sites in the Transfer Act program exceeds those in the voluntary program by at least an order of magnitude. Furthermore, the Task Force has great concerns about establishing fixed audit deadlines if the DEP is not provided with additional staffing (as discussed elsewhere in this report) to conduct these audits. The members of the Task Force have heard time and again that timeliness and certainty are the keys to Brownfield redevelopment. While providing deadlines for the conduct of audits would increase certainty, pulling existing staff off of other regulatory review processes in order to conduct audits would drastically decrease the timeliness of those reviews which are also critical to Brownfield redevelopment. Accordingly, additional staff is needed to conduct the audits in the manner described below.

Proposal: Modify the Transfer Act, specifically section 22a-134a, to include language that would provide for verifications to be approved by the Commissioner within a set period of time, or else have the Commissioner notify the certifying party that an audit would be conducted. Such language could take a form as follows:

For remediation actions of establishments that have been verified by Licensed Environmental Professionals, such verifications shall be deemed approved by the commissioner unless, within 12 months of such submittal, the commissioner

determines, in the commissioner's sole discretion, that an audit of such verification and/or remedial action is necessary to assess whether remedial action beyond that which is indicated in such verification is necessary for the protection of human health or the environment. Such an audit shall be completed within 24 months of the submittal of the verification. At the completion of the audit, the commissioner shall approve the verification, disapprove the verification or request additional information from the party submitting the verification.

If the commissioner requests additional information from the party submitting the verification and such information has not been provided to the commissioner within 90 days prior to the deadline for completing the audit, the period for completing the audit will be extended up to 180 days. The commissioner shall make such requests in writing. Upon evaluation of the additional information submitted to the commissioner, the commissioner shall approve or disapprove the verification.

If the commissioner disapproves the verification, the commissioner shall give his or her reasons therefore in writing, provided such certifying party may appeal such disapproval to the superior court in accordance with the provisions of section 4-183. Prior to approving a final verification, the commissioner may enter into a memorandum of understanding with the certifying party with regard to any further remedial action or monitoring activities on or at such property which the commissioner deems necessary for the protection of human health or the environment.

If it is found that the verification submitted to the Department was obtained through the submittal of fraudulent information, or that intentional misrepresentations were made to the Department in connection with the submittal of the verification, such verification may be subject to audit regardless of the time that it was made. Moreover, the deadlines for the conduct of an audit will not apply to those sites which is currently subject to an Order of the Department.

Recommendation #D.4: Changes to LEP Regulations. *Authorize the LEP Board and DEP to issue a variety of penalties against an LEP who is found to be in violation of applicable regulations.*

Why? The success of Brownfield redevelopment lies not only in DEP but also with the Licensed Environmental Professionals (LEPs) who are often delegated the responsibility to initially oversee a site investigation and remediation in lieu of DEP. DEP retains audit rights over the LEP's work and evaluates a steady stream of LEP verifications. For the LEPs to meet DEP's scrutiny and provide a consistent quality of work, DEP needs some additional enforcement mechanisms to insure that the LEP is doing an appropriate job. Like many other licensed professionals (lawyers, doctors, etc.), Licensed Environmental Professionals are governed by an independent board "the LEP Board," tasked with ensuring individual LEP compliance with applicable regulations. Given the public trust that is put into the LEP program, it is critical that the LEP Board has a sufficient array of

penalties available to it to deal with noncompliance. Unfortunately, the regulations that currently govern LEPs have limited options for dealing with LEP noncompliance. Under the current regulatory regime, if the LEP Board finds that an LEP has not followed applicable regulations in the performance of the LEP's duties, the Board is limited to either suspending/canceling the LEP's license, or taking no action.

As a result, minor infractions that might otherwise generate some sort of adverse consequence, such as a fine or a letter of reprimand, may be overlooked if the offense does not warrant suspending the LEP from working. Moreover, the public has no way of knowing which LEPs are fully compliant with applicable regulations and which have a history of minor noncompliance. Such information may be useful to individuals seeking a qualified LEP to assist them with redevelopment projects.

Such fines and other penalties would address those situations where LEPs commit minor infractions and oversights; however, the DEP has expressed concern that there may be a small number of LEPs who intentionally submit false information to the Department in an effort to obtain site verifications more quickly. Indeed, the DEP is interested in seeing that submittal of false information to the DEP is treated as an imprisonable offense throughout the environmental statutes. Currently, the environmental statutes provide a patchwork of penalties, with some statutes allowing for imprisonment and large fines for intentional misconduct, while other statutes do not authorize such penalties.

While the Task Force has no opinion as to the appropriateness of the DEP's proposal to unify intentional misconduct penalties throughout the environmental statutes (as this is well beyond the scope of the Task Force's enabling legislation), the Task Force does agree that to the extent such misconduct affects the redevelopment of contaminated sites, such misconduct should be subject to stiff sanctions. Furthermore, given the public good with which LEPs have been entrusted, it makes sense that these individuals should be held to high ethical standards in their interactions with the DEP. Accordingly, the Task Force recommends that penalties be established for those LEPs who are found to be intentionally submitting false material information to the DEP.

In making this recommendation, the Task Force would point out that it does not believe that it is a widespread practice in the LEP community to submit false data; indeed, no member of the Task Force could personally recall knowledge of any LEP intentionally misleading the DEP. Nonetheless, the Task Force believes that this measure is appropriate, if only to provide added assurances of the public benefit the LEP program provides.

Proposal # 1: The LEP Board should be authorized to issue a variety of penalties against an LEP who is found to be in violation of applicable regulations. These penalties would include:

1. Letter of reprimand;
2. Fines, not to exceed \$10,000 for a first offense and \$20,000 for a second or subsequent offense;

3. Temporary suspension of a license; and
4. Permanent revocation of license, subject to reapplication.

In addition, these penalties should be made publicly available so that potential consumers of LEP services can ascertain which LEPs have blemishes on their records and which LEPs do not.

Proposal #2: The statutes concerning the LEP program should be revised so that an LEP who “knowingly makes any false material statement to the Department [of Environmental Protection]” is subject to the same standards set forth for the same type of intentional misconduct that exists for similar DEP programs. For example, Conn. Gen. Stat. §§ 22a-131a (a) and 22a-133w (e) provide examples of such penalties for other remedial programs. Obviously, the General Assembly is free to modify such penalties up or down as it sees fit.

Recommendation #D.5: Provide the Ability to Engage in Meaningful Cost Recovery Actions *Revisit whether Connecticut should revise its statutes to enable parties who conduct a cleanup to recover funds from responsible parties.*

Why? Since the enactment of CERCLA or Superfund in 1980, parties who have cleaned up environmental contamination had had the ability to seek recoupment of their cleanup costs. Under the terms of CERCLA, a party that paid for the remediation of a site had a right of contribution against other parties who caused a release of hazardous substances at the property. In other words, while that party may have had to bear the initial costs of cleanup associated with a site, that party would have an opportunity to sue other potentially responsible parties in order to recoup their fair shares of the cost of remediation. Such contribution claims could be maintained regardless of whether the party conducting the remediation was subject to a federal or state order or was voluntarily remediating the site.

At the end of 2005, however, the U.S. Supreme Court put an end to contribution actions in cases where parties were undertaking voluntary remedial activities. That decision, *Cooper v. Aviall*, precluded individuals who voluntarily remediated a site (as is the case with many Brownfield developers) from seeking response costs in a contribution action against other potentially responsible parties.

During the last legislative session, the DEP established a small working group to study this issue and to make recommendations for legislation that would address the issue. The result was proposed SB 06-415, which would have allowed for such private contribution actions to be brought under state rather than federal law.

Unfortunately, SB 06-415 was never enacted upon by the full General Assembly. This was due, in part, to the fact that certain interests believed that they had been excluded by the DEP’s working group. Nonetheless, providing such a program would immensely help the private developers of contaminated parcels and is part of a

comprehensive Brownfields program. Such a program would allow private site owners to go out and obtain cleanup funds from those who are truly responsible for the contamination at the site in question. It also would protect against viable parties avoiding their clean-up responsibilities and allowing the municipality or other parties to take action and suffer the costs instead.

Proposal: Have the DEP reconvene its *Cooper v. Aviall* workgroup, but ensure that this group's work is well publicized and its meetings are made open to the general public. Instruct the workgroup to evaluate SB 06-415 and determine whether the provisions found in the bill continue to have merit in light of the concerns raised by the other interested parties. If the provisions in the bill are lacking substantive merit, the workgroup should provide the General Assembly with alternative language that will allow private redevelopers to sue responsible parties in connection with remediation costs.

Recommendation #D.6: Address Flood Plain Management Concerns. *Expressly allow that adaptive reuse of existing buildings sited on Brownfields may be considered in the public interest when evaluating whether to allow funding of residential development on a flood plain.*

Why? Currently, Conn. Gen. Stat. § 25-68d provides that state agencies, including the DECD, cannot provide funding to “critical activities” (i.e., funding for schools, hospitals or residential development) if the critical activity will occur within the 500 year floodplain. Specifically, section 25-68d (a) provides as follows:

- (a) No state agency shall undertake an activity or a critical activity within or affecting the floodplain without first obtaining an approval or approval with conditions from the commissioner of a certification submitted in accordance with subsection (b) of this section or exemption by the commissioner from such approval or approval with conditions in accordance with subsection (d) of this section.

As a practical matter, what this means for Brownfield redevelopment is that the DECD cannot fund such redevelopment if the redevelopment will involve residential re-use in a 500 year floodplain. While this might not be problematic under ordinary circumstances, the Task Force heard testimony from several individuals that the conversion of mill properties into apartments and/or condominiums frequently confronts this issue. With their need for water power, historic mills were frequently located immediately adjacent to water. Such properties are often the target of residential re-use into loft condominiums or apartments, however, such projects cannot receive state funding due to the restrictions of section 25-68d (a).

There are exceptions for this rule, notably the exceptions provided in section 25-68d (d), however, in order for the exceptions to apply, the critical activity in question must be “in the public interest.” That leaves a great deal of discretion to agencies; however, agencies are understandably reluctant to simply declare that Brownfield redevelopment is sufficiently in the public interest to overcome applicable floodplain restrictions. This means that, among other things, mill properties will have a difficult time being redeveloped as residential projects since many of those properties are located within floodplains.

Proposal: Expressly allow that Brownfield redevelopment can be considered in the public interest, so that all other things being equal, the funding of residential redevelopment of a Brownfield will not be halted solely due to floodplain concerns. This would not mandate development in the floodplain, as there will be times when the dangers of such development will outweigh any benefits. However, for those instances where all other floodplain issues can be addressed, such as providing a safe, dry egress in the event of a flood, it may be in the public interest to develop a particular site, in spite of the floodplain issues. In addition, the Task Force’s proposed changes are narrow in scope so as to permit the re-use of existing buildings, but so as not to encourage the development of new structures within the floodplain.

In order to address this issue, language could be added to section 25-68d (d) as follows (proposed insertions are underlined):

- (c) Any state agency proposing an activity or critical activity within or affecting the floodplain may apply to the commissioner for exemption from the provisions of subsection (b) of this section. . . . The commissioner may approve or approve with conditions such exemption if the commissioner determines that (A) the agency has shown that the activity or critical activity is in the public interest, will not injure persons or damage property in the area of such activity or critical activity, complies with the provisions of the National Flood Insurance Program, and, in the case of a loan or grant, the recipient of the loan or grant has been informed that increased flood insurance premiums may result from the activity or critical activity, or (B) in the case of a flood control project, such project meets the criteria of subparagraph (A) of this subdivision and is more cost-effective to the state and municipalities than a project constructed to or above the base flood or base flood for a critical activity. For purposes of this section, the adaptive re-use of existing buildings on contaminated parcels of land be considered to be in the public interest. Following approval for exemption

Recommendation #D.7: Provide Relief from the “Upjohn Statute”. *Craft protections from adverse tax valuations for a certain class of site owners who are engaged in voluntary remediation and who have a remedial action plan already in place.*

Why? The Current language of Conn. Gen. Stat. § 12-63e provides that contamination cannot be considered in the valuation of parcels for tax assessment purposes. As a general rule, this provision makes good sense for the state of Connecticut and local municipalities since it will prevent site owners from benefiting if they fail to pay for the environmental contamination they may have left behind. However, if a site owner is in the process of actively remediating the site, it has the unintended consequence of inflating property values to a point where tax increment financing is not a viable tool to fund Brownfield remediation.

The Task Force members recognize that this proposal may not be useful to every municipality. However, for those sites that have a viable owner, and where the municipality find that it is in its best interest to decrease the assessed value of the property for a brief duration in order to have tax increment financing available, the proposed revision to Conn. Gen. Stat. § 12-63e may become a useful tool for remediating sites that are currently in use today, but in danger of becoming abandoned Brownfields in the near future.

Proposal: Craft protections for existing site owners who have contaminated parcels of property, but who have shown a tangible interest in remediating such property. Such protections could be established by modifying section 12-63e as follows (proposed additions are underlined for ease of review):

§ 12-63e. Valuation of property on which a polluted or environmentally hazardous condition exists.

- (a) Notwithstanding the provisions of this chapter, when determining the value of any property, except residential property, for purpose of the assessment for property taxes, the assessors of a municipality shall not reduce the value of any property due to any polluted or environmentally hazardous condition existing on such property if such condition was caused by the owner of such property or if a successor in title to such owner acquired such property after any notice of the existence of any such condition was filed on the land records in the town where the property is located. For purposes of this section, an owner shall be deemed to have caused the polluted or environmentally hazardous condition if the Department of Environmental Protection, the United States Environmental Protection Agency or a court of competent jurisdiction has determined that such owner caused such condition or a portion of it.
- (b) If any owner of such property or if any successor in title to such owner who acquired such property after any notice of the existence of any such condition was filed on the land records in the town where the property is located enters into an agreement with the

Department of Environmental Protection to voluntarily remediate such property, such agreement is filed on the land records of the town where such property is located, and has developed an approved remedial action plan for the property, then the provisions of section 12-63e(a) may not apply to such property. In such instances, the assessors of a municipality may reduce the value of any property due to any polluted or environmentally hazardous condition existing on such property. The assessors of a municipality may also raise the value of any property after remediation is completed in order to take into account the removal of such pollution or environmentally hazardous condition.

Recommendation #D.8: Provide Additional Education to Legacy Owners and the Regulated Community: *OBRD and DEP should provide additional education to the regulated community to let them know when reporting of pre-existing environmental contamination is required and when such reporting is not required.*

Why? Currently, many members of the regulated community are unaware of the reporting obligations that they will be subject to if they discover contamination on their properties. Accordingly, they do not undertake Phase II testing at such sites for fear that they must report any findings from adverse Phase II site assessments. It is believed that the regulated community would be more willing to undertake such testing if it were made aware that the only instances for which reporting of historical environmental conditions at a site (i.e., not fresh spills) would be required is when there is a significant environmental hazard under Conn. Gen. Stat. § 22a-6u. Such hazards include, but are not limited to, potential contamination of public or private drinking water wells, concentrations of contaminants in excess of thirty times of applicable RSR levels and when vapors pose an explosion hazard.

Proposal: OBRD and DEP need to provide additional education to the regulated community to let them know when reporting of pre-existing environmental contamination is required and when such reporting is not required. The DEP's December 2005 Fact Sheet on this topic can be used as the basis for such additional education.

V. RECOMMENDATIONS FOR ADDITIONAL LONG TERM CHANGES

A comprehensive Brownfield program also requires the development of potentially three additional programs (1) tax credits; (2) tax refunds; and (3) environmental insurance. The Task Force believes that each of these programs may have merit and warrant further discussion. The Task Force is reluctant to make specific recommendations as further study is required which could not be accomplished in the given time frame. For example, as to tax incentives, the Northeast-Midwest Institute released a study of other state programs in October 2006. As to an insurance program, years of study may be necessary. Three states have such programs and all are in their infancy. Northern Kentucky University also recently published a study funded by a grant provided by EPA which was released in December 2006. Nonetheless, these three programs were generally evaluated and should be considered further:

A. Tax Credits

Tax Credits have become a popular tool in Brownfield redevelopment. Connecticut has a tax credit program, its Urban and Industrial Site Investment Tax Credit Program. This program has certain limitations in the Brownfield context. Therefore, an entirely new program is required. We do see the value in developing a tax credit program that: (1) is available not only to corporations but to anyone who cleans up a Brownfield – partnerships, LLCs, LLPs, subchapter S corporations, not for profits, community groups and municipalities; (2) allows for the transferability of credits, so that local governments and nonprofit developers that cannot benefit fully or directly from the credits may market the credits to raise capital for the redevelopment. Tax credits that can be successfully marketed can be assembled and sold to corporations in significant amounts. Therefore, the credits need to be fungible, transferable and assignable; and (3) tax credits for Brownfields should not be subject to the same revenue – positive requirements as the existing State program, nor should a property owner have to wait until four years after the remediation to earn the credit; the credits should be immediately available upon completion of the remediation under the “Form IV” criteria under the Transfer Act. Tax credits can be a powerful tool to encourage voluntary cleanups at Brownfield sites.

A number of states currently have voluntary tax credit programs including Florida, Michigan, Massachusetts, Rhode Island, and New York. In Florida, tax credits are provided to eligible applicants up to 35 % of the costs of the voluntary cleanup activities, with a cap of \$250,000 a year. Each year, the Florida DEP grants up to \$2 million in tax credits, which can be applied to certain of the states taxes (corporate income or intangible personal property tax). In Michigan, a property owner may apply for a single business tax Brownfield redevelopment credit for an “eligible” property. It can total 10 % of any innocent party’s development costs (excluding remediation), up to \$1 million. New York offers three types of tax credits to offset the costs of site preparation, property improvements, on-site groundwater clean-up costs, real property taxes, and environmental insurance premiums, provided the developer has entered into an agreement with the environmental agency to clean-up the property. Eligibility requires a

certificate of completion from the agency indicating that the cleanup has been achieved. All credits are refundable. The tax credits vary from a business tax credit beginning at 12 percent or a personal tax credit beginning at 10 percent, with various increases depending upon where the site is located and the number of jobs that can be created.

The Rhode Island program offers a 10% tax credit on the cost of substantial rehabilitation for certified sites. Michigan provides single business tax credits to help with the expense of demolition, environmental clean up and other remedial actions needed to facilitate reuse of undesirable properties. Credits are available for up to 10% of eligible investments to a limit of \$30 million. The credits are approved by an economic growth authority. In general, Massachusetts provides tax credits when a property has been remediated in accordance with the state requirements ranging from 25 – 50 percent of the net response and removal costs, depending upon the work done and whether it is a permanent solution. Such credits are available to whoever does the cleanup – whether it is the property owner or the tenant. The credits are carried over for a 5 year period. The Massachusetts program sunsets so as to encourage clean-up during the next few years.

Tax credits are powerful tools and there is a demand for this program among the developers. A tax credit program should be investigated further and be part of a comprehensive Brownfield program. The Task Force has not fully evaluated tax credits in the context of the state tax structure nor does it have an opinion as to the amount of any tax credits that could be made available.

B. Tax Refund or Rebate Programs

Connecticut's reliance on the property tax places a disproportionate burden on municipalities to bear the cost and burden of remediating a Brownfield and incentivizing the developer. The vast majority of sites exist in the urban cities where the property tax is not the appropriate vehicle to encourage Brownfield development as the municipality is ill-suited to provide such support. Other mechanisms need further exploration.

For example, in Florida, when a Brownfield is redeveloped a Brownfield tax refund of up to \$2500 for each new job, or 20 percent of the average wage of the jobs created, whichever is less, is provided. Tax refunds are applied to many tax categories and apply to any business that locates at a Brownfield site. Depending upon the location and the type of business, the refund could increase. Another type of "bonus" is also available. To qualify, the applicant must show that the project will diversify and strengthen the local economy and promote capital investment in the area surrounding the rehabilitated site. The Task Force has not fully evaluated these programs but recommends that further study be undertaken.

C. Insurance

The Task Force engaged in several lengthy discussions as to how to best provide finality to remediation projects, regardless of who caused the contamination in the first

place. The Task Force heard repeated testimony from members of the regulated community who indicated that they possessed formerly contaminated parcels that had been remediated or were capable of remediation, but those entities were loathe to put such properties back into productive re-use due to attendant liability concerns once the property was out of their control. Under State law, liability for a particular site does not end once the clean up has been completed. As such, some companies believe they are better served by owning blighted sites and “mothballing” these properties so that they can control the sites and better control their liabilities. Because they cannot control the future actions of others, and have potential liability of an infinite duration, they will not place these properties out into the marketplace for redevelopment.

Intellectually, the Task Force understands the argument that a party who has successfully cleaned up a parcel in full accordance with applicable standards should not be held liable for future actions at the site. After all, it is the desire of the State to have contaminated parcels be cleaned as quickly as possible, and undertaking such remedial action should be rewarded, not punished. The current liability scheme remains in place to address those instances where a property is thought to be fully remediated; however, previously undiscovered contamination is found at a later date.

For example, envision a scenario in which all soil at a site is tested and remediated where appropriate, and groundwater is found not to have exceedences of any standard. Unbeknownst to both the DEP and the site owner, contaminated groundwater is actually leaving the site and contaminating an adjacent drinking water well. If liability were cut off at the time of completion of the remediation, the owner of that drinking water well would have limited recourse to address his injuries. As such, the State continues to impose liability for an infinite amount of time on responsible parties, regardless of whether the site has been fully remediated.

Several states are investigating this issue in greater detail and are looking to environmental insurance products to address this gap. Wisconsin, for example, has a program under which a site that is verified to have been cleaned up in accordance with all appropriate standards may apply for a cut off of all further liability associated with that site. In exchange for eliminating liability for the site, the party requesting such liability relief must pay a fee to the state. The bulk of this fee is then used for the state to purchase environmental insurance products from the private insurance market. The state becomes the insured for the site, and if future unforeseen contamination arises at a particular site, the state utilizes proceeds from its insurance policy to cover the remediation of the newly-discovered contamination.

Other states, such as Massachusetts and California, have investigated the use of a state-wide environmental insurance program, with varying degrees of success. Investigating and designing such a program is a significant undertaking, and well beyond the time limits provided to the Task Force. Nonetheless, it is an undertaking that the Task Force believes is worth doing in the near future, whether by the State government, another task force, or by a combination of volunteer stakeholders.

VI. CONCLUSIONS

The Task Force's Recommendations for long term Brownfield redevelopment in Connecticut involve three primary principles:

- (1) Organizational reform, including structural, programmatic and cultural change, with associated improvements in streamlining, staffing, resources and accountability, and a heightened commitment to education and outreach;
- (2) New public funding programs available to municipalities, economic development authorities, regional economic development authorities, or qualified nonprofit, community 501(c)(3)s, existing "Legacy" property owners and new "White Knight" developers with (a) an expanded scope of recoverable costs (including the costs of investigation, assessment, remediation, abatement, hazardous or RCRA materials disposal, long term groundwater or natural attenuation monitoring, costs associated with an environmental land use restriction, attorneys fees, consultant costs, and building and structural issues, including demolition, asbestos abatement, contaminated wood or paint removal and other infrastructure remedial activities) and (b) an expanded scope of redevelopment end-uses projects (including manufacturing, retail, residential, municipal, educational, parks, community centers, and mixed use development); and
- (3) Regulatory reform, to include liability relief, a focus on providing certainty and closure, while insuring that the goal of environmental protection is achieved, and programmatic changes to DEP practices.

In conclusion, the Task Force believes that a rigorous and comprehensive evaluation of the state's Brownfield programs is needed and ongoing oversight is essential. Additionally, other states have developed various sophisticated models for program implementation, liability protection, cost recovery, regulatory compliance, service delivery systems and oversight. Studying these programs provide valuable insight to the current status of Connecticut's programs. For example, in New Jersey, the New Jersey Brownfields Redevelopment Interagency Team provides a coordinated approach to Brownfields, which also includes creating special task force groups to find ways to improve Brownfield policies and programs. The Task Force then makes policy recommendations to the governor and the legislature on various issues. We believe there is merit to continuing this Task Force, either in its current constitution or another, at the election of the General Assembly. As you can see, this Task Force has just begun this process and has learned a great deal about our state's programs, public perceptions, municipal concerns, and property owner, developer or user challenges. We believe there is more to do and we would be honored to provide further valuable insight as the State moves forward with longer term planning for Brownfields redevelopment.

BACKGROUND

Selected Publications Reviewed by the Task Force

For further reading in other state's programs, the Task Force recommends and relied upon various data provided by DECD, CDA/CBRA, the General Assembly's Office of Legislative Research, and DEP, and documents which are readily available and accessible on their websites. The draft University of Connecticut report was also generally available; however, since no final document was provided, it was not a complete resource. Other useful reference materials relied upon by the Task Force included:

Phase II What Works: An Analysis of State Brownfield Programs, prepared by the National Brownfield Association (undated)

State Brownfield Financing Tools and Strategies, by Charles Bartsch and Barbara Wells (Northeast-Midwest Institute) (April 2005)

State Brownfield Tax Incentives, by Charles Bartsch and Barbara Wells (Northwest-Midwest Institute) (October 2006)

State Brownfield Insurance Programs (Northern Kentucky University) (December 2006)

GLOSSARY OF TERMS

- BAG** – Brownfield Assessment Grants
- Brownfield** - any abandoned or underutilized site where redevelopment and reuse has not occurred due to the presence of pollution in the soil or groundwater that requires remediation prior to or in conjunction with the restoration, redevelopment and reuse of the property
- CBIA** – Connecticut Business and Industry Association
- CBRA** – Connecticut Brownfield Redevelopment Authority, a subsidiary of CDA
- CCEDA** – Central Connecticut Economic Development Authority
- CCM** – Connecticut Conference of Municipalities
- CDA** – Connecticut Development Authority
- CEDAS** – Connecticut Economic Development Association
- CERCLA** – Comprehensive Environmental Response, Compensation and Liability Act (or Superfund)
- C.G.S.** – Connecticut General Statute
- COST** – Connecticut Organization of Small Towns
- DECD** – Department of Economic and Community Development
- DEP** – Department of Environmental Protection
- Direct Exposure Criteria** – Soil remediation standards developed to address the risk to human exposure from contaminants
- DPH** – Department of Public Housing
- DOT** – Department of Transportation
- EARLF** – Environmental Assistance Revolving Loan Fund
- ELUR** – Engineered Land Use Restriction
- Engineered Controls** – A designed system to physically isolate polluted soil and minimize migration of liquid in accordance with RSRs.
- EPA** – United States Environmental Protection Agency
- EPOC** – Environmental Professionals Organization of Connecticut
- GIS** – Geographic Information System
- Legacy Property Owner** - Anyone whose predecessors or own activity contaminated the property decades ago because those historical activities were common practice and not restricted by law or regulation.
- LEP** – Licensed Environmental Professional
- MOU** – Memorandum of Understanding
- NBA** – National Brownfields Association
- OBRD** – Office of Brownfields Remediation and Development
- OIRE** – Office of Infrastructure and Real Estate
- OLR** – Office of Legislative Research
- OPM** – Office of Policy & Management
- ORG** – Office of Responsible Growth
- PCB** – Polychlorinated Biphenyls
- RCRA** – Resource Conservation and Recovery Act
- RSR** – Remediation Standard Regulation
- SCPRIF** – Special Contaminated Property Remediation & Insurance Fund
- State** – State of Connecticut

STEAP – Small Town Economic Assistance Program, C.G.S. § 4-66g

Task Force – Brownfield Task Force

TIF – Tax Increment Financing

Transfer Act – Connecticut Property Transfer Act, C.G.S. § 22a-134 et. Seq.

USRAP – Urban Site Remedial Action Program

Urban Act – Urban Action Grants in Aid, C.G.S. § 4-66c

White Knight - Anyone who did not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste and such person is not a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable under C.G.S. §§ 22a-432, 22a-433, 22a-451 or 22a-452.

