



Occum Park- Norwich, CT

# Second Report of the State of Connecticut

## TASK FORCE ON BROWNFIELDS STRATEGIES



Derecktor Shipyard- Bridgeport, CT

**SECOND  
REPORT OF THE  
STATE OF CONNECTICUT**

**TASK FORCE  
ON  
BROWNFIELDS STRATEGIES**

*Submitted to the*

**Commerce Committee  
&  
Environment Committee**

*of the*

**Connecticut General Assembly**

**FEBRUARY 2008**

## **PURPOSE OF THE REPORT**

The purpose of this report is to respond to Public Act 07-233, “An Act Implementing the Recommendations of the Brownfields Task Force.” By way of background, the Brownfields Task Force was created through Public Act 06-184, “An Act Concerning Brownfields,” to develop long-term solutions for cleaning up Brownfields and to propose new incentives to stimulate investment and rehabilitation of Brownfields. The Task Force issued its first Report to the Commerce and Environment Committees in February 2007. The Task Force issued a number of recommendations, several of which were enacted by the Legislature and signed into law by Governor M. Jodi Rell in 2007. In its 2007 report, the Task Force acknowledged that certain issues required further study. For example, the necessity of state sponsored programs for Brownfields tax credits and environmental insurance in Connecticut were not fully studied by the Task Force during its first term in 2006-2007. As a result, Public Act 07-233 reauthorized the Task Force to continue to evaluate the state’s programs and, in particular, to make recommendations regarding the role of Brownfields tax credits and environmental insurance.

In Public Act 06-184, a Brownfield is 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 has continued in its mission to “study strategies for providing long-term solutions for the state’s Brownfields as defined.

While the State has made some incremental progress with respect to Brownfield redevelopment over the past year, it is our hope that our Second Report will further the discussion and lead to continued modifications of our State’s Brownfields programs. The Task Force has continued to look at the existing state programs, the modifications made in 2006 and 2007, and whether the issues and impediments to successful Brownfields redevelopment that were raised by the many commentators before the Task Force have been addressed. While we are building upon Public Act 07-233, we have also looked back at our 2007 Report, which proposed a number of significant recommendations that were not enacted but would have the effect of stimulating Brownfields reuse and redevelopment and would prevent sites from becoming future Brownfields. Certain of these proposals that are truly critical to Connecticut developing a meaningful Brownfields program were not enacted.

These programs are absolutely necessary and fundamental in order to spur new development and redevelopment on these sites and to make Connecticut truly competitive in the marketplace. Unless a strong base and core of agency programs exist, that are well-funded and staffed, our state will lose in the competition among states for jobs and quality of life. Strong state sponsored municipal and municipal economic development and community programs, with state funding, oversight and training, will go much farther to restoring abandoned sites, than the existing state programs currently allow.

As we stated in 2007, the recommendations in this Report will undoubtedly require accepting significant and, in some cases, controversial changes to existing programs, structures and philosophies. While we recognize that these changes may be perceived as dramatic, for our state to remain competitive, a new approach is needed. Our state can no longer afford to ignore the realities of these sites and must provide financial support and liability relief to municipalities, existing and future owners. In addition, adequate programs and training, particularly training, must be accessible to municipalities, municipal economic development corporations, community non-profits and regional economic development authorities.

All programs – those existing, and as proposed in this Report, need to be more user friendly for all parties - local communities, developers and existing property owners. Perhaps most importantly, a municipality and an innocent purchaser, who played no role in the contamination of a property, but wishes to put that property into productive re-use, must be shielded from the weight of the heavy regulatory cloak that the property continues to wear. The federal government recognized this dilemma when it passed its Brownfields reforms in 2002. Connecticut, which was once a leader in Brownfield redevelopment, now finds itself lagging behind its peers in this endeavor.

The Task Force members are grateful to the staff of the Departments of Economic and Community Development and Environmental Protection and the Connecticut Development Authority, which spent the time with us and assisted us in our meetings, researching issues, inviting various representatives to testify, responding to our various questions and in engaging in lively debate and discussion.

**The members of the Task Force recognize that the General Assembly will also be taking up issues related to responsible growth and/or “smart growth.” The Task Force strongly believes that a comprehensive responsible growth initiative will only succeed with a strong Brownfields program. The two are inextricably linked. Therefore, as the General Assembly considers the issues surrounding responsible growth, the Task Force would be remiss if it did not remind the members that the smartest use of Connecticut’s limited land resources is the recycling of contaminated parcels.**

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 is the continuation of a very important initiative for determining the future of Connecticut Brownfield properties.

Finally, the Task Force specifically recognizes the Co-Chairs of the Commerce Committee, Representative Jeffrey Berger of Waterbury and Senator Gary LeBeau of East Hartford, who recognized early on the importance of Brownfields revitalization to municipal economic and community development and public health and safety. We thank them for their leadership, support and tenacity on all these issues.

## **ADOPTION OF REPORT**

**On Monday, February 25, 2008, 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, the public officials from the Department of Environmental Protection and the Department of Economic and Community Development who are members of the Task Force and who were present at the Task Force meeting on February 25, 2008, appropriately abstained from the final vote on the Task Force's Report. The representative from the Office of Policy & Management was not in attendance due to a scheduling conflict.**

## MEMBERS OF THE BROWNFIELDS TASK FORCE

<b><u>Member</u></b>	<b><u>Position/Occupation</u></b>	<b><u>Appointing Authority</u></b>
Ann M. Catino, Co-Chair	Partner, Halloran & Sage, LLP	President Pro Tempore of the Senate
Gary B. O'Connor, Co-Chair	Partner, Pepe & Hazard, LLP	Speaker of the House of Representatives
Robert Genaurio	Secretary, Office of Policy & Management	Statutory Member
Gina McCarthy	Commissioner, Department of Environmental Protection	Statutory Member
Joan McDonald	Commissioner, Department of Economic & Community Development	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

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## I. EXECUTIVE SUMMARY

As in 2007, the Task Force approached Brownfields reform from two different angles: (1) Evolutionary and (2) Revolutionary. Looking back on our recommendations from the previous year, we recognized that many of our recommendations were a combination of both. However, despite passage of Public Act No. 07-233, which enacted several of the Task Force's 2007 recommendations, we believe that significant progress has not yet been made. Many of our downtown and main streets continue to deteriorate. Old abandoned manufacturing facilities stand as decaying monuments, silently guarding the secrets of the past. We can do more. To make Connecticut economically competitive, for the well-being of our state and to improve the quality of life in our communities, we must do more in the following areas:

### *Funding is needed.*

Connecticut must turn the corner or we are going to be left behind. We now significantly lag behind other states' funding of Brownfield programs. As the Task Force concluded its work, we learned that the Commonwealth of Pennsylvania has heard the call. Earlier this month, Governor Ed Rendell proposed in his budget \$100 million dedicated to clearing Brownfields sites in the state, in addition to the funds already expended by Pennsylvania to deal with these issues.

Last year, the Task Force proposed three new programs with an initial capitalization of \$75 million, with an additional \$25 million/year for the next five years. While Public Act 07-233 §§ 3-5 did create a new program, the new program is funded "subject to the availability of funds." From Public Act 07-07, it appears that this program *for the entire state* was proposed to be funded at \$2.5 million<sup>1</sup>, less than one tenth of the Task Force's recommendation and well below the funding of other states' programs. In addition, the Task Force proposed that the pilot program established almost two years ago in Public Act 06-184 be funded at \$16 million. Only \$4.5 million was authorized, and this funding still awaits State Bond Commission approval.

Lack of funds and waiting for the Bond Commission will not spur new investment in the state; it will only convey a "business as usual" attitude within the state. The pilot program authorized by the General Assembly two years ago has yet to have one shovelful of dirt turned over, due in large part to this lack of funds. If Brownfield development is truly going to occur in Connecticut, the only solution involves meaningful funding, consistent with other states and consistent with the recognition that Brownfields remediation is an expensive endeavor.

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<sup>1</sup> Section 4 of Public Act 07-233 establishes a new account for the funds called the "brownfield remediation and development account"; however, Public Act 07-07, authorizes the \$2.5 million to be placed in a Regional Brownfield Redevelopment Loan Fund. The Task Force presumes that the "fund" created under Public Act 07-07 is the new program established in Public Act 07-233 and that any confusion will be addressed either by another legislative act or the agency.

***New Programs are needed to incentivize municipalities, non-profit economic development corporations and the private sector.***

While Public Act 07-233 §§ 3-5 did create a new program, it combined the three new programs into one. By making this combination, certain important program elements that would have sent a strong message that a new day exists were missing. The Task Force was looking for clarity in programs and transparency. Program applicants look for funding programs they can understand, and that possess certainty and known time frames. The Task Force was also looking to send a strong message that change is at hand and new, meaningful opportunities exist. The Task Force recommends further program modification consistent with these goals.

***Staffing is needed.***

The scope of the newly-created Office of Brownfields Remediation and Development (OBRD) is quite broad. Under section 32-9cc, as amended by Public Act 07-233, OBRD is called upon to accomplish the following tasks:

- assist developers,
- streamline the process,
- identify potential sources of funding and develop procedures for expediting the application of funds,
- identify and prioritize state-wide Brownfields development opportunities,
- provide assistance and information concerning the state's technical assistance, funding, regulatory and permitting programs, and
- develop a communication and outreach program to educate municipalities, property owners, economic development agencies, and other organizations on the state's Brownfields programs.

Currently, OBRD has one full time staff person from DECD<sup>2</sup> to accomplish these tasks, with the assistance of one designated liaison from DEP. While both of these individuals are quite capable in their individual capacities, they cannot possibly achieve the agenda the OBRD has been called upon to accomplish; no two people can. For this office to accomplish its mission, its training of outside resources and for the state's Brownfield programs to be effective, adequate staffing with program managers, fiscal analysts, planners, project managers and program educators dedicated to Brownfields issues is essential. In our 2007 report, we requested \$3.5 million, adjusted on an annual basis, for purposes of hiring the appropriate personnel and implementing the marketing, education and outreach programs. The Task Force again requests additional staffing and funding to the DEP, DECD and OBRD.

It is incumbent upon the General Assembly, the Administration and all of us to address these issues now. They are not going to disappear, nor are they likely to get

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<sup>2</sup> We are mindful that a nationwide search is underway for a director of OBRD, however, OBRD's current staffing level consists of one full-time employee.

better with the passage of time. Consistent with the laudable responsible growth initiatives currently being mapped, Brownfields redevelopment is an integral part. Indeed, responsible growth cannot happen without a meaningful Brownfields program. To promote development where infrastructure exists, transportation corridors accessible, mass transit readily available and utilities pre-existing, the municipal core centers and urban areas that once fueled Connecticut's economy are ripe for restoration in accordance with smart and responsible growth principles. Similarly, existing, but long neglected ghosts of the state's manufacturing past that exist along waterways and channels or that served as a central hub for a community can be resurrected and restored for a variety of uses. As a state, this marriage has to be recognized and Brownfields programs supported, in terms of policy, staffing, funding and programmatic changes. Failure to do so will simply result in more contaminated properties lying vacant, having no discernable beneficial use, and placing Connecticut further behind its peers in an ever increasingly competitive environment.

## **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 was and remains 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. Under 06-184, the Task Force concluded its work upon submission of its Report to the Environment and Commerce Committees, which occurred on February 15, 2007. Two bills were raised during the 2007 session of the Connecticut General Assembly implementing the recommendations of the Task Force. Eventually, Substitute House Bill No. 7369 emerged as the vehicle by which several of the Task Force's recommendations were enacted. Substitute House Bill No. 7369 passed both the House and Senate chambers of the General Assembly unanimously, on June 4 and June 6, 2007, respectively. On July 6, 2007, this bill was signed by Governor M. Jodi Rell and became Public Act No. 07-233.

Pursuant to section 15 of Public Act No. 07-233, the Task Force on Brownfields Strategies was reestablished and it reconvened in September 2007. All members appointed previously pursuant to section 11 of Public Act 06-184 remained on the Task Force and, in accordance with section 15 of Public Act 07-233, two additional members were added: the Commissioner of Economic and Community Development and the Secretary of the Office of Policy and Management. At times, for the Commissioners and the Secretary, their designees as authorized under the Act, participated in their stead. Those designees were Elizabeth Appel for the Commissioner of Economic and Community Development, Robert Bell for the Commissioner of Environmental Protection and Phil Smith for the Secretary of the Office of Policy and Management.

In addition, the member agencies graciously provided staff to conduct research for us and update the Task Force on the development of the OBRD and the status of the Memorandum of Understanding entered into by and between the DECD, DEP, DPH and CDA. Both the OBRD and the MOU were authorized pursuant to Public Acts 06-184 and 07-233, respectively. The Task Force extends its special thanks to the two liaisons to the OBRD, Liz Appel from DECD and Graham Stevens from DEP, who were most willing to perform research, contact potential witnesses, and provide us with considerable insight into the existing programs. In addition, Rob Bell and Betsey Wingfield from DEP and Cynthia Petruzzello from CDA/CBRDA provided supporting information and valuable input. Joseph Oros, from DECD, is specially thanked for all of his time and effort assisting the Task Force with its various mission and affairs. Finally, David Hurley of Fuss & O'Neill, acting as a liaison to the Task Force from the National Brownfields Association, is specially recognized for the exceptionally valuable assistance he gave to the Task Force by locating potential witnesses and sources of information that were germane to the issues being studied by the Task Force.

## B. Meetings & Public Participation

Upon reauthorization, the Task Force convened 13 times: September 24, October 15, 29, November 6, 13, 19, 26, December 10, 17 of 2007 and January 7, 22, 28, and February 25 of 2008. In total, the Task Force heard from over 30 individuals representing municipalities, non-profit economic development corporations, environmental consultants, buyers and sellers, property owners and developers, attorneys, bankers and insurance company representatives who are involved in the day-to-day challenges presented by these sites. The vast majority of the individuals who appeared before the Task Force in 2007 had not appeared previously and many came from out of state.

During the November and December meetings, the Task Force heard from several public officials. We were quite grateful and thank all the state officials who came and spoke to us. We heard from state officials implementing certain of Connecticut's tax credit programs. Robert Rigney from DECD gave the Task Force an overview of the Urban & Industrial Site Reimbursement Tax Credit Program. Tim Coppage from the Connecticut Housing Finance Authority, presented a summary of the state's housing tax credit program and discussed whether Brownfield projects could utilize the tax credits. Similarly, Karen Senich, the Acting Commissioner of Culture and Tourism, provided an overview of the film tax credits being used by the state. In addition, Linda Spencer, who administers the federal and state historic tax credits program for the state, spoke on the historic tax credit program and its applicability to Brownfields sites.

As occurred last year, developers of some of the significant Brownfields redevelopments in the state continued to testify before the Task Force to tell us about their experience developing Brownfields sites in the state under the existing state programs. John Freeman from Antares Development discussed the Antares Development in the south end of Stamford, which is anticipated to provide 4000 units of residential housing and over 1 million square feet of commercial/office/retail space, all within a five minute walk of the Stamford train station. Other developers, including Joseph Cotter, National RE/Sources, who has developed Brownfields sites in Norwalk and Newark, and Adam Winstanley, who has been involved with 45 projects in Connecticut since 1994, also testified before the Task Force.

Certain industrial site owners testified before the Task Force, including: Patrick Hayden, Vice President of Operations, Dunham Craft and President of the Smaller Manufacturers' Association and Frank Johnson, Executive Director of the Manufacturers Alliance of Connecticut. George Gurney, President of the Environmental Professionals Organization of Connecticut, also spoke about the continuing challenges faced by the licensed environmental professionals in the state and the need for greater DEP oversight and involvement in the redevelopment of sites or for additional clarity in the rules and policies if such oversight cannot be provided by DEP.

Additionally, two individuals built upon last year's testimony regarding the role of non-profit economic development corporations and provided valuable insight into the role of non-profit economic development corporations in the state and the challenges that are presented in Connecticut to such corporations. James Ryan, President of the Shelton Economic Development Corporation and Richard Pertz, Executive Director of the Urban Brownfield Revitalization Corporation, both provided testimony on these issues. Based upon their testimony, it is clear that the process for Brownfield redevelopment must be straightforward, accessible and simplified and readily available to this type of an organization. In addition, non-profits require the statutory tools to bring a cost-recovery action against the responsible parties who are shirking their clean-up responsibilities.

Several days were also dedicated to the topics of whether a Brownfields tax credit program or environmental insurance program should be statutorily established in the state. Panels were convened to focus on state initiatives in New York and Massachusetts. Specific recognition of these individuals (as well as other individuals who testified on these issues) is contained later in this report under the various topic headings.

On November 13th and 19th, 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 these records is being submitted to the Commerce Committee.

On Monday, February 25, 2008, 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, the agency representatives in attendance from DECD and DEP appropriately abstained from the final vote on the Task Force's Report.<sup>3</sup> The agencies' participation in the Task Force and development of this report does not imply the agencies' endorsement of any recommendations contained herein.

### C. Objectives

For the second term of the Task Force, the members narrowed its focus given the recognition that many of the 2007 modifications weren't yet tested, let alone well known, and that the 2008 session of the General Assembly would not provide a long legislative session to allow for additional sweeping reform. Therefore, the Task Force planned to look at four primary areas: First, whether the changes encompassed in Public Act 07-233 sufficiently provided the tools deemed necessary to (i) stimulate Brownfields redevelopment, (ii) change the existing programs in a meaningful way to enhance investment in these properties, (iii) restore developer confidence in Connecticut, (iv) attract new investors to our state, (v) encourage existing property owners to remain and (vi) encourage municipalities, regional and municipal economic and community non-profit corporations to take action to take title and/or redevelop the properties themselves.

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<sup>3</sup> The representative from the Office of Policy & Management was not present due to a scheduling conflict.

Second, during 2007, we heard anecdotal reports that tax credits serve as a stimulus to Brownfields redevelopment in other jurisdictions. Tax credits, therefore, were a subject for considerable study.

Third, the Task Force planned to critically evaluate the various environmental insurance programs in other states to determine whether a state sponsored environmental insurance program should be statutorily created in Connecticut.

Fourth, the Task Force continued to evaluate whether the OBRD has the necessary organizational support in terms of staffing, funding and programs to accomplish its mission.

Our observations and recommendations are set forth in the next Section.

### **III. RECOMMENDATIONS**

#### **A. ADEQUATE FUNDING AND PROGRAMMATIC CHANGES**

In 2007, the Task Force made a number of recommendations regarding funding and new programs in its 2007 Report. We heard criticism over the lack of funding and continue to hear strong support for the proposed programs. In our 2007 Report, we exhaustively identified all of the state's programs and concluded that they were not working from a variety of perspectives. Simply put, they suffered from a lack of meaningful funding, inaccessibility, lack of clarity and certainty, undue delay and organizational paralysis and confusion. While we are optimistic that some of these issues (e.g., the organizational paralysis and confusion) may begin to be addressed through the OBRD, we are not too optimistic that concerns of funding, accessibility, certainty, and timing have been addressed. In fact, despite the good modifications that were made in 2007, these modifications do not send a strong, clear message that the needed change is occurring.

##### **1. ADEQUATE FUNDING OF BROWNFIELD PROGRAMS IS ESSENTIAL.**

The Task Force previously proposed three new programs with an initial capitalization of \$75 million, with an additional \$25 million per year for the next five years. While Public Act 07-233 §§ 3-5 did create a new program, the new program is funded "subject to the availability of funds." From Public Act 07-07, it appears that this program *for the entire state* was proposed to be funded at \$2.5 million<sup>4</sup>, which is significantly below the Task Force's recommendation and well below the funding levels provided by other states. In addition, the Task Force proposed that the pilot program established almost two years ago in Public Act 06-184 be funded at \$16 million -- only \$4.5 million was authorized. This program has yet to be funded owing to a lack of State Bond Commission approval. In short, nothing has happened with respect to the pilot program since the General Assembly authorized it nearly two years ago.

This failure to act sends the message that it is business as usual in the state and that no new initiatives exist. A program without funding or with limited funds does not send a message that there is a new beginning for Brownfield redevelopment in Connecticut. While other states sprint ahead towards Brownfield redevelopment, the \$2.5 million provided by Connecticut, while a start, is not even a crawl, much less walking. The \$2.5 million authorized *for the entire state* is more than likely not even sufficient to cover one site, and this amount of funding simply cannot jump start any program. It does not send a clear message that the state is serious about promoting a

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<sup>4</sup> Section 4 of Public Act 07-233 establishes a new account for the funds called the "brownfield remediation and development account"; however, Public Act 07-07, authorizes the \$2.5 million to be placed in a Regional Brownfield Redevelopment Loan Fund. The Task Force presumes that the "fund" created under Public Act 07-07 is the new program established in Public Act 07-233 and that any confusion will be addressed either by another legislative act or the agency.

Brownfields program. This lack of commitment is evident not only from the Task Force members' experiences or the testimony of witnesses, but also from looking further into Public Act 07-07.

When Public Act 07-07 is examined more closely, it is apparent that the new Brownfields program is capitalized with \$2.5 million, however, within paragraphs of that authorization, several other similarly sized grants come to light. For example, a grant-in-aid in an amount not to exceed \$2.0 million is provided to the Town of Greenwich for remediation of Brownfields at the Cos Cob Power Plant site. The former Long Lane School in Middletown is slated to receive remediation funding not exceeding \$5,000,000. The Town of Enfield will receive a grant-in-aid for a soil remediation project at Enrico Fermi High School, in an amount not exceeding \$ 3.3 million. These are all likely worthy remediation projects, but the costs involved beg several important questions: How can \$2.5 million be used as leverage to attract new capital investment throughout the state? How can \$2.5 million be used to attract applicants, projects and redevelopment throughout the state? The answer is that it can't. Such levels of funding would be inadequate to fund the projects listed above; they cannot be seriously contemplated to spur a state-wide Brownfields program.

This level of funding continues to send the message that per project funding with numerous tiers of involvement (including that of the State Bond Commission) continues as the standard bearer in Connecticut. Every project, big or small, must go through this process. The message sent amounts to little more than a business as usual approach. The result is a *fait accompli*: We will not gain any competitive advantage over other states, we will not have reinvestment in our communities as we should, our downtowns and historic sites will continue to deteriorate, and our soil and groundwater will continue to be contaminated. Therefore, the Task Force recommends that Brownfield redevelopment be provided with meaningful funding, consistent with other states and consistent with the recognition that brownfields remediation is an expensive endeavor.

***Recommendation:*** *Fund the Brownfield Remediation and Development Account and the programs established under Public Act in the amount of \$75 million to provide the financial assistance program established in Public Act 07-233, with \$25 million each year for the next five years. Moreover, the Bond Commission shall fully allocate all funds identified in Public Act 07-07 and as may be allocated in 2008 and future years to the brownfield remediation and development account established in Public Act 07-233 and allow the funding to be administered by the Commissioner of DECD without the need to return to the Bond Commission before doing so. Additionally, it is recommended that \$5 million be provided to the CDA for purposes of expanding the Loan Guarantee Program.*

2. NEW PROGRAMS ARE NECESSARY TO CHANGE THE LANDSCAPE AND DEMONSTRATE THE AVAILABILITY OF MEANINGFUL OPPORTUNITIES

New programs, specifically targeted to Brownfield redevelopment, are also required if Connecticut is to achieve its goals of remediating Brownfield sites. Only through strong, clear and understandable programs, open to competition, will the “Eligible Applicant” defined under section 3 of Public Act 07-233 truly believe that a project can receive support administratively, in a time frame that can be planned and is certain, and according to understandable requirements and rules. Furthermore, such programs provide accountability. Therefore, as to these programs, with some adjustments, we are compelled to restate our recommendations of last year.

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

*Recommendation: Create a “Remedial Action and Redevelopment Revolving Municipal Fund” with the initial capitalized brownfield remediation and development account. The purpose of this program is for DECD to provide municipalities, economic development authorities, regional economic development authorities, or qualified nonprofit, community and economic development corporations (“Grant Recipients”) with grants necessary to foreclose, develop, investigate, remediate and reuse Brownfield properties within their towns and regions. The scope of the grants would be to fund the activities set forth in Public Act 07-233 § 5(d). A certain percentage could be set aside for large versus small municipalities and the nonprofits so there is parity among the recipients. Any “Grant Recipient” may also seek reimbursement of the costs and expenses it incurs from any party responsible for the pollution separate from the grant award consistent with the authority conferred on the Commissioner and Attorney General pursuant to 07-233§ 5(g) to recover the funds provided under this program.*

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 February 1 each year, with the first RFP to be issued on February 1, 2009, and awards to be made by May 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 Commissioner 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 Commissioner should be identified in the application so that the applicant may respond to each factor.

- (b) If and when the “Grant Recipient” develops and sells the property, 80% of the grant or 80% of the net profit on the sale, whichever is less, is returned to the fund, minus 20 %, which the “Grant Recipient” 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 “Grant Recipient” to establish its own revolving loan fund program with the grants in accordance with state criteria for such programs or as may be developed by the “Grant Recipient” and approved by the Commissioner of DECD. The “Grant Recipient” may then 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. If a loan is provided, 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 “Grant Recipient” 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 “Grant Recipient” 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.
- (h) The “Grant Recipient” must be statutorily authorized as set forth below to access the site for purposes of performing the necessary investigations. No title is required to pass until “Grant Recipient” decides to take title through foreclosure or otherwise. The landowner is not authorized to

object as the investigation is deemed necessary for purposes of alleviating a threat to public health, safety and the environment. The only permitted objection would be if the landowner is diligently investigating the site itself.

**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, the regional authorities or the non profit economic development corporations may be the only catalyst for developing a Brownfield property. Municipalities are the ones that are left with the under or nonperforming 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. Such a program provides necessary support to municipalities and the municipal and regional non-profit economic development corporations who are most affected, likely most capable and truly motivated to restoring these properties to productive use. The recommendations set forth above are designed to promote such development and can fill a needed gap in the existing funding programs.

Municipalities also may not have the tools, staff, resources and expertise readily available to do the investigation, oversee the remediation and negotiate the redevelopment. We learned last year that many municipalities are forming, with the community corporate leaders, the non-profit economic development corporations that are designed to have the expertise, staffing and education necessary to raise the funding, oversee the work and redevelop or sell the property. Last year, we heard from many municipal representatives and representatives from these non-profits about this model and the need for meaningful funding, programs and training. This year, we heard from James Ryan, President of the Shelton Economic Development Corporation, who gave a first hand experiential presentation of the utility of these organizations to a community desperate for community revitalization. He emphasized the need for staffing at the DECD and the DEP to help and train the smaller municipalities so that they can access capital and redevelop their sites. Currently, Shelton will have nearly \$300 million worth of anticipated private funding coming in over the next ten years to strategic investment by local and state governments. He acknowledged the high risks associated with brownfield redevelopment, but the lack of quality of life, loss of tax base and human capital was too great for the municipality to bear any longer. Richard Pertz, Executive Director of the Urban Brownfield Revitalization Corporation, which is a not for profit founded to promote and facilitate the remediation and reuse of Brownfield properties in New York, echoed the success of his organization in New York. For such corporations to work, the risk to the individuals and the organization has to be minimal, individual trained and government oversight is necessary. Moreover, the process has to be accessible, straightforward and simplified.

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.

Finally, the grant recipient should be allowed to seek reimbursement of its costs and expenses from the party responsible for the contamination. Under 07-233, the Commissioner is authorized to seek reimbursement of the grant money but the Grant Recipient is likely to incur additional costs. Accordingly, they should be allowed to seek reimbursement or cost recovery from the responsible parties either in tandem with or separate from the action maintained by the Commissioner.

We believe this program, the liability protections, access rights and rights to reimbursement need to be set forth in one clear, concise Act so that the municipal official can read it and understand it. Liability protections should include protection from liability for third-party claims, from off-site contamination and the protection should extend to the corporate officers and directors and municipal officials.

### **Second Program: Targeted Brownfield Development Loan Fund**

***Recommendation:** Create a Targeted Brownfield Development Loan Fund with \$32.5 million of the initial capitalization to DECD available to those persons who have no direct or related party liability for the site conditions, or existing property 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 persons who seek 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 potential purchaser must have an option to purchase or lease the Property in order to qualify. Existing property owners of contaminated sites also qualify.

- (b) The Property must be subject to either the Transfer Act or an agreement is in place that it will enter the DEP Voluntary Program; an existing property owner must enter the DEP Voluntary Program.
- (c) The loan will be not be paid back and no interest will accrue 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. 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.
- (l) the loan recipient should be allowed to seek reimbursement of its costs and expenses from the party responsible for the contamination

**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. 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 also may 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 program 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.

## **B. TAX CREDITS**

Tax credits are powerful tools, however it remains to be seen whether there is a strong demand for such Brownfields tax credits among the development community. The Task Force did not hear a chorus of requests that a state Brownfield tax credit is a needed tool to stimulate Brownfields redevelopment. Rather, the Task Force heard municipalities and developers earnestly request strong programs that they can rely upon, with the hallmarks of certainty, reasonable time frames and funding for the early, at risk activities (e.g., site assessments), assistance with the significant cost of remediation and renovation, and liability relief. However, many interested parties asserted that tax credits are generally viewed as a useful tool to have in the tool box of Brownfields incentives.

Upon review of the various state programs, a number of themes emerge: first, will the state be reliant upon a strong Brownfields program with available funding and financing or does the state want to rely upon tax credits which do not require any new funds to be infused into a program. Second, it is clear to the Task Force that tax credits do not provide cash flow at the beginning of the project. Many speakers talked about the need for assistance at the front end of a project, but tax credits do not provide this type of assistance (especially if the credits are really tax refunds). Therefore, the Task Force urges the adoption of the programmatic and funding recommendations over tax credits to address this gap and obvious need and infuse necessary dollars into the project.

The utility of tax credits lies in their ability to generate additional cash return to the owners/investors, which may come sooner if the credits are capable of being sold on the open market. Certainly, a state can have both a financial assistance program and tax credits, and the Task Force recommends that such a complimentary Brownfield tax credit program be developed. In so doing, it should be noted that tax credits have become a popular tool in Connecticut. Film tax credit programs have recently joined the array of tax credits for housing and historic preservation. Concern has been expressed that Connecticut has too many tax credits and, as a result, they are becoming decreasingly valuable particularly as they are transferable. If that is the case, the Task Force recommends that the state focus on developing robust financial assistance programs and forego a tax credit program. We do not recommend developing a program that has no or limited utility because the market is saturated.

It should also be noted that Connecticut already has a tax credit program ostensibly covering Brownfields called the Urban and Industrial Site Investment Tax

Credit Program (UISITC) (C.G.S. § 32-9t). This tax credit is to promote investment in urban and brownfield industrial sites. This is a tax credit program as opposed to a tax refund program, which is an important distinction when comparing tax credit programs in other states. In brief, up to \$100 million per project could be claimed as a credit against corporate business tax over a 10 year statutory schedule; however, the total value of credits the state can issue is statutorily capped at \$500 million. The credit may be carried forward for 5 consecutive years and is subject to a one-time sale or assignment, provided that the portion sold is used in the same taxable year.

To qualify, a \$5 million minimum investment is needed if a project is located within a designated area or \$50 million if the project is located outside of such an area. The program became effective in 2000 and was first used in 2003. For a property to qualify, it must either be “industrial” or located in a distressed municipality, an Enterprise Zone Community, or in a municipality with more than 100,000 people, regardless of whether the property is contaminated. The definition of industrial property is not limited in location, but it must be subject to a “spill”, be classified as an “establishment” under the Connecticut Transfer Act, or be a “facility” and require remediation, renovation or demolition. A total of five projects have used the program and it has not been used for any Brownfields sites yet.

In addition to the limiting definition of the “industrial” site, and taking into account the fact that many of the State’s historically contaminated sites are not “establishments”, there are other limitations to this program that limit its ability to provide the necessary assistance to a Brownfields developer or owner. The tax credits generated by this program are not readily transferable nor can a municipal or non-profit claim the benefits of the tax credit and sell it. Further, a significant limitation on this tax credit is that any development has to be revenue neutral. In other words, the total credit cannot exceed projected local and state tax revenue from the completed project, which may likely not be the case for Brownfields sites, which are largely much more costly to redevelop. The model that performs the projections turns a blind eye to the benefit of Brownfields redevelopment and other benefits and the spin-off investment that occurs once the Brownfields site is revitalized. This presents a serious obstacle to utilization of this tax credit for Brownfields properties when many of the benefits are not as readily measured within the confines of a myopic, single purpose model. Additionally, another obvious shortcoming is that the program does not help smaller sized projects, which are often in most need.

Our housing and historic tax credits can offset some of the shortcomings in the UISITC and complement it if a project qualifies. The Connecticut Housing Finance Authority (CHFA) administers the housing tax credit program. There are three programs offered: (1) a 9% competitive low income housing tax credit established by Congress, with a predetermined amount based upon population made available for distribution by the State. Connecticut then offers them on a competitive basis, with the amount of requests always exceeding the available credits. These credits are a dollar-for-dollar credit subtracted directly from one’s tax liability. The credits can be used by developers or sold to corporations or investor groups to reduce their own federal tax payments. The

credit can be claimed for 10 consecutive years and can be used for new construction, substantial rehabilitation or acquisition and rehabilitation. (2) A 4% program that can be used for rehabilitation, acquisition or to leverage other funds. It requires more than 50% of the project to be funded through tax exempt bonds. (3) There is also a \$10 million State Housing Tax Credit Contribution Program, funded by the State and available to non-profit development organizations. This program provides gap financing for affordable housing developments and capitalizing revolving loan funds to qualified applicants. The program offers a dollar for dollar tax credit against state tax returns. Over \$100 million has been distributed thus far. This credit can be used in mixed use developments, with retail and residential use. The tax credits can be sold and the utilities and insurance companies reportedly buy these credits. Certain environmental costs (e.g., costs of a Phase I or Phase II environmental investigation) can be considered an eligible cost for all these tax credits.

A historic preservation tax credit is authorized under C.G.S. § 10-416a, which establishes a 25% tax credit for the conversion of historic commercial and industrial buildings to residential use. Partial tax credits are available for mixed residential and commercial uses. To claim this credit, however, the building must be listed on the National or State Register of Historic Places, either individually or as part of a historic district. In addition to other requirements, tax credits are available for the tax year in which the building is placed in service. They may be sold, and are generally at a discount. Significantly, these credits are to be used only by C corporations with tax liability under Chapters 207-212 of the Connecticut General Statutes. The state imposes an annual cap of \$15 million and a project cap of \$2.7 million on these credits. These credits may be claimed in connection with hard construction costs only, but lead paint removal and asbestos abatement are covered.

Our housing and historic tax credits, however, fall short of providing true incentives for Brownfields redevelopment. By contrast, Rhode Island provides enhanced tools. The revitalization of Providence and many of Rhode Island's communities are due to its housing and historic tax credit programs that promote brownfield redevelopment. In Rhode Island a Mill Building Tax Credit exists for investors in certain municipalities and there are Historic Mill Building Tax Credits for the rehabilitation of historic commercial structures. No cap exists in Rhode Island and the credits include some soft costs. And, the credit is higher at 30% and freely transferable. Tax credit programs were the preferred economic development tool so that the state would not have to create additional new funding programs and funding. Unlike the Connecticut programs, the Rhode Island historic and housing credits may be targeted more broadly.

The above discussion is not meant to be exhaustive but to illustrate what certain programs offer, how the various programs differ and their limitations. The recommendations presented in this section for a Connecticut Brownfields Tax Credit draw upon several of the concepts already established in Connecticut and the brownfield credit programs in existence in other states order to create a truly useful credit in our state.

Many reports were presented to or investigated by the Task Force summarizing the various state tax credit programs.<sup>5</sup> What became quite clear is that the states with the most successful tax credit programs are, in reality, tax refund programs or a combination of credit and refund programs. Select state programs and certain of their program elements are highlighted here because they have features that are lacking in Connecticut's existing programs and they possess certain attractive elements that may stimulate investment in brownfields.

New York. New York's program is extremely successful, largely because it is very broad and, by some reports, too broad. It is a relatively new program established in 2003. It was reported that 201 sites are in the program throughout New York. Much of the criticism involves the scope of the tax credit and that the costs of the program appear high when New York evaluates it under its "revenue neutral" model. However, that model reportedly overlooks the benefits and the increased sales & uses tax revenues, employment tax revenues and other revenues generated by the project. The model also ignores the ripple effect of the development in the community. Additionally, the cost that is often criticized is actually a fraction of the capital investment that is made by the developers or site owners.

New York's program provides many of the elements useful to fashioning a tax credit program for Connecticut. New York offers three types of tax credits that may be applied against the state's corporation tax, franchise tax on business, banking or insurance corporations, and the personal income tax. The credits pass through to owners of LLCs and the partners of LLPs as more and more sites are being developed by these types of entities in New York (as in Connecticut). And, the credits are refundable to the tax payer. The credit, therefore, is equivalent to an overpayment of taxes. If the credit exceeds the taxpayer's state income tax liability, the State will issue a refund check for the excess amount.

To be eligible for any of the three credits, the site must be in the state's clean-up program. Certain categories of property are ineligible: a site on the National Priorities List of contaminated sites, a site subject to any state or federal corrective or enforcement action or a site where a civil or criminal action is pending where investigation or remediation of the property is sought.

The taxpayer becomes eligible for the tax credit upon a receipt of a letter from the NY environmental agency that the clean-up has been completed. The first tax credit is a Redevelopment Credit, which is very powerful. It has stimulated considerable investment, but it is also criticized because it provides a credit against not only the

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<sup>5</sup> The Task Force recognizes and thanks several people who gave significant time to the Task Force and presented reports summarizing the programs discussed here. Attorney Barry Trilling, from the law firm of Wiggin & Dana, prepared an extensive survey of sixteen state Brownfields tax incentive programs. Phil Bousquet, an attorney in New York with Green & Seifter, with considerable experience regarding the New York State tax credit program prepared a report to the Task Force on New York's program and testified before us. Tom Barry, Vice President of the Massachusetts Business Development Corporation, who appeared to discuss the Massachusetts Brownfields Access to Capital Program, also touched on the Bay State's tax credit program.

capitalized costs of cleanup but all the site redevelopment (including buildings and other depreciable equipment placed in service on the site). This credit ranges from 10-22% of the clean up and site redevelopment costs, including the costs of site preparation, property improvements, and the on-site and groundwater remediation costs. The base is 10% for individuals, 12% for C Corporations and is increased by 8% if the site is located in a census tract characterized by high poverty and unemployment. An additional 2% may also be claimed if the site is remediated to the highest standards, allowing for unrestricted use.

The second program is a credit based on property taxes. The credit is limited to 25% of the property taxes on the remediated site, but increases to 100% if at least half the site is located in a high poverty, high unemployment census tract. The credit further may be limited by a multiplier that can vary from year to year depending upon the number of full time employees. For example if there are more than 100 employees, the multiplier is 100% and the credit is further capped at \$10,000 for each full time employee. The credit is available for 10 years upon issuance of the letter indicating the site has been remediated. This is not a credit against the property taxes and no property tax abatement occurs so the municipality continues to benefit. Consequently, this credit may also be used in combination with tax increment financing.

The third credit is based upon premiums paid for qualified environmental remediation insurance, and is capped at the lower of \$30,000 or 50% of the premium.

New York reportedly opted to assist brownfield development through tax credits as opposed to grant programs and its tax credit (refund) program is exceptionally attractive. There are some limitations to this program. First, the degree to which the refunded tax credits are federally taxed is a limitation. While it is possible that grants may be subject to federal taxation, the Task Force also questions whether the tax credit, once refunded, will also be subject to federal tax. (The Task Force is offering NO opinion on the tax consequences of grants versus tax credits, but is simply raising the question). Additionally, the New York tax credits cannot be “sold” or “transferred,” nor can non- profits or municipalities take advantage of these tax credits. The Task Force during its first term as well as during this term, heard that raising the early money for the site investigation was often a problem and that would not be solved by the New York model as no money would be realized or returned to the developer until after the remediation was completed to the satisfaction of the New York environmental authority. Second, the fact that the municipality or the non-profit are not authorized to take advantage of the program is also a limitation.

Massachusetts. In Massachusetts, a tax credit is available to taxpayers who perform site assessments, containment and removal of contamination from the property. The “response action” that is subject to the credit is for the purpose of achieving a permanent remedy or solution to the site. If the permanent remedy or solution is not maintained, then the credit must be paid back. The credit ranges from 25% to 50% of the net response and removal costs, depending upon the location of the property and the remedy. Unused credits can be carried forward for five years as long as the remedy

operation status or permanent solution is maintained. The credits are also transferable to other corporations or nonprofit organizations. Owners of contaminated sites may claim these credits as long as they did not cause or contribute to the release or own the property at the time of the release.

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.

The Massachusetts program has limited utility. In addition, it was reported that no one has used it. In part, the dilemma that exists is the role the licensed professional plays in Massachusetts. Called LSPs, these professionals can investigate and verify a site, subject to the state’s audit rights. If the state audits such a site and the remedy is not acceptable to the state, the credit would have to be forfeited and paid back. If a credit is sold, this nuance becomes logistically unworkable.

Florida. Florida presents a useful comparison point between New York’s and Massachusetts. In Florida, a Voluntary Cleanup Tax Credit program was created to encourage voluntary cleanup at certain sites. The credits are transferable, a significant feature, and can be claimed by municipalities and nonprofit developers that can’t use them. These entities may transfer the credits to businesses so that they may raise additional revenue or encourage businesses to reuse brownfield sites. The credits may be transferred in whole or in units no less than 25% of the credit and the transferee has five years from the date of transfer to redeem the credit, notwithstanding the date on which the credit accrued to the transferor.

In brief, the tax credits are provided to eligible applicants up to 50% of the costs of the voluntary cleanup activities (excluding costs funded by another state program), with a cap of \$500,000 a year. A property must be in a remediation program to qualify, but persons who caused or contributed to the contamination after July 1, 1997, are not eligible. Persons that are subject to an ongoing corrective or enforcement action are eligible, but certain conditions apply.

If the credit provided is not fully used in any one year because of insufficient tax liability, the unused portion may be carried over for a period not to exceed five years. In addition, in the final year of clean-up, the taxpayer may claim an additional 25% of costs as an incentive to complete the remediation. 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).

Florida also provides a redevelopment “bonus” to encourage redevelopment and job creation at designated brownfield areas through a tax refund of up to \$2500 for each new job or 20 percent of the average wage of the jobs created, whichever is less. All tax

refunds can be applied to many tax categories, including corporate income tax, personal property, insurance premium and sales and use.

Elements of all the state programs identified above have been considered as well as the programs already in existence in the state to arrive at our recommendation.

**Recommendation:** *The Task Force recommends that a tax credit program could be established. If established, it should be:*

- (1) *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. The tax credits should also be able to flow through LLC to its members, LLPs or partnerships to its partners, etc.*
- (2) *applied to as many taxes as possible – corporate taxes, income taxes, franchise taxes (etc.)*
- (3) *readily transferable and retransferable, 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.*
- (4) *guaranteed to anyone who cleans up the property without the scrutiny associated with the UISITC program that focuses on jobs and taxes.*
- (5) *immediately available as the remediation occurs and to guaranty completion of a site, an added credit can be provided in the final year as an incentive to finish.*
- (6) *maximizing eligibility options. Not unlike in Florida, persons who have no responsible for the property condition can take full advantage of the credit, but persons that may own or whose legacy caused the contaminated site may take advantage of the credit, but with certain conditions.*
- (7) *unavailable to grant recipients but available to loan recipients.*
- (8) *a 50% tax credit should be allowed for the first \$100,000, 30% credit for the second \$100,000 and a 20% credit for each \$100,000 thereafter. Sites in distressed municipalities or enterprise zones receive an additional 5% credit. The tax credit would include all costs of the environmental investigation and remediation, soft and hard costs, and building rehabilitation costs. The applicant must enter the state's voluntary program or be a Transfer Act property.*

## C. ENVIRONMENTAL INSURANCE

Over the past five months the Brownfields Task Force has explored the potential of state sponsored brownfield insurance programs to serve as catalysts for brownfield revitalization. Specifically, the Task Force assessed the effectiveness of such insurance programs on limiting the risk to existing property owners, potential developers and public agencies in the remediation of brownfields. The Task Force also attempted to assess the incentive value of insurance programs relative to other state assistance programs such as grants, low interest loans, tax credits and assessment subsidies. To that end, the Task Force reviewed the existing brownfield insurance programs in Connecticut, Massachusetts, New York and Wisconsin.

The Task Force received valuable input from representatives of the Insurance Association of Connecticut, environmental insurance brokers, officers of environmental insurance companies, State officials, managers of state insurance programs, lenders and insurance consultants. The Task Force was especially fortunate to review a number of articles on state insurance programs including a report entitled “State Brownfield Insurance Programs, 2006” prepared by Kristen R. Yount, PhD of Northern Kentucky University and Peter B. Meyer, PhD of the University of Louisville. Professors Yount and Meyer also testified before the Task Force.

**Types of Insurance Products.** There are three primary environmental and insurance products used in state programs: Cost Cap policies, Pollution Liability policies, and Secured Lender policies.

Cost Cap policies help to protect against cost overruns on planned remediations. Generally, the insured pays the excess cost over a self-insured retention. Cost Cap coverages may include: (a) clean-ups of greater volumes/higher concentrations of known pollutants than anticipated in the remediation plan; (b) clean-up of newly found, pre-existing pollutants not included in the remediation plan; (c) site assessments; (d) cost due to regulatory changes during performance of the remediation plan; (e) failure of the remediation plan; (f) soft costs due to delays caused by pollution. One of the major downsides of Cost Cap policies is their unavailability to small projects. Generally, these policies are not available for sites with estimated clean-ups under \$1 million to \$2 million. Reportedly, there have only been two Cost Cap policies issued in the State of Connecticut in the last five years.

Secured Lender policies protect lenders from losses due to contamination of sites which secure lender loans. Typically, these policies pay the lender the lesser of: (a) the clean-up costs; (b) the fair market value of the secured property; or (c) the outstanding loan balance. These policies may also cover third party claims for bodily injury and property damage as well as legal defense costs against third party claims. Policy coverage periods range from three to ten years.

Pollution Liability policies provide for a number of protections against claims arising from pollution conditions at or migrating from an insured site, including: (a) clean-up of previously unknown pollution required by governmental entities; (b) clean-up resulting from a regulatory re-opener; (c) bodily injury and property damage to a third party at an insured site; (d) bodily injury and property damage caused by pollution migrating from an insured site to a neighboring site; (e) clean-up of pollution conditions and business interruption losses of previously unknown pre-existing pollution; and (f) legal defense costs. Policy periods range from one year to ten years although it appears that these policies are trending towards a maximum policy period of five years. The Pollution Liability policy is the oldest and most widely used environmental insurance product. It is the only insurance product commonly underwritten in Connecticut.

**Connecticut's Environmental Insurance Program.** Since 1990 DECD has offered technical and financial assistance and subsidies to developers and property owners in obtaining insurance in connection with brownfield projects. It is a flexible program that is customized to the needs of each developer. Financial assistance for policies has been provided through the Manufacturing Assistance Act and is restricted to commercial and industrial projects. Eligibility is based on: (a) a project's economic benefit which is measured by certain indices including increased jobs and tax revenues; (b) private investment in the project; (c) impact on a municipality and (d) need for financial assistance. The decision to provide insurance to an eligible party is based on DECD's determination that there are substantial risks needed to be insured and that the cost of the insurance is warranted based on the coverages provided for those risks. Interestingly, there are no preset limits on the amount of insurance subsidies awarded per project.

Another program which offers financial assistance for environmental insurance is the Special Contaminated Property Remediation and Insurance Fund (SCPRIFF). DECD administers the SCPRIFF in conjunction with DEP. The primary goal of the program is to provide financial assistance for brownfield remediation through low interest loans that generally have a term of five years. Any person, corporation, municipality or business is eligible to apply for SCPRIFF. No environmental insurance policies having been issued under SCPRIFF.

Last year, the State created another brownfield insurance subsidy as part of a new brownfield financial assistance program. Pursuant to Public Act No. 07-233, the Commissioner of Economic and Community Development may award financial assistance to eligible applicants for a variety of brownfield remediation costs, including the cost of environmental insurance. The type and amount of financial assistance is based on a number of statutorily prescribed criteria. Since the program is brand new and bond proceeds have yet to be deposited in the Brownfield Remediation and Development Account, no environmental insurance policies have been issued.

**Massachusetts Insurance Program.** In 1998 the Commonwealth of Massachusetts enacted broad legislation to promote environmental clean-up and redevelopment of brownfield sites across that state by providing \$15 million initial capitalization to the Brownfields Redevelopment Access to Capital Program (BRAC Program). Originally

created and capitalized in 1953 to stimulate economic development, this new capital was specifically targeted to underwrite the cost of environmental insurance. In sum, the BRAC Program makes state subsidized environmental insurance protection available to most parties who wish to purchase, clean-up and/or develop brownfield sites anywhere in Massachusetts. The BRAC Program is operated by the Massachusetts Business Development Corporation (MBDC) which is a non-governmental economic development organization that reports to the State's Department of Economic Development. The BRAC Program provides up to 50% of the cost of environmental insurance premiums to a maximum of \$50,000.00 in the case of a private owner or developer and up to 50% of the cost of environmental insurance premiums to a maximum of \$150,000.00 in the case of a public or quasi-public entity. The types of environmental insurance eligible for coverage are: (a) Pollution Liability; (b) Cost Cap for sites with clean-up costs exceeding \$1,000,000.00; and (c) Secured Lender policies.

In order to qualify for this subsidy, certain criteria must be met:

- (i) The property being insured must be located in the Commonwealth of Massachusetts.
- (ii) The property is designated by the BRAC Program as a brownfields site.
- (iii) A qualifying loan is being used to fund some aspect of the property. (Certain public, quasi-public and non-profit entities may be exempt from this requirement.)
- (iv) The property to be insured is being purchased, developed or redeveloped in connection with the purchase of insurance.

Interestingly, there are no "needs tests" or target area requirements. In addition, an applicant does not need to be an innocent owner to participate in the program.

Although initially created as a single-carrier program, today there are multiple participating insurers that are prequalified under the BRAC Program. Insurers use their own policies but must attach a special state endorsement. Due to the fact that there are multiple insurers, BMDC has not been able to negotiate a discount in the insurance premiums.

Some of the more pertinent statistics compiled by BMDC detailing the results of the BRAC Program from October 1999 through December 2006 include the following:

- Total projects: 290
- Total insurance provided: \$1.06 Billion
- Subsidies paid: \$5.5 Million
- Cleanup cost expended on projects: \$165 Million
- Development expenditures: \$3.15 Billion

Based on the testimony of Thomas J. Barry, Senior Vice President, MBDC, it would appear that most of the project sites would have been developed even without the

environmental insurance assistance. He indicated that the insurance program was simply one more tool in a tool box that helps to make a project viable.

**New York Insurance Program.** In 2003, the State of New York created three tax credits, one of which pertained to environmental insurance premiums. The tax credit is for the lesser of \$30,000 or 50% of the cost of insurance premiums paid. Eligible environmental insurance must contain specified Cost Cap and/or Pollution Liability coverages. To be eligible, a party must have executed a Brownfield Cleanup Agreement with New York's Department of Environmental Conservation (DEC), have a DEC Certificate of Completion and a certification from the insurer confirming that coverages purchased qualify for the credit. New York has not been able to estimate the number of insurance policies issued that are tied to tax credits for brownfields remediation projects in the State of New York.

**Wisconsin Insurance Program.** The State of Wisconsin has two insurance programs: the Voluntary Party Liability Exemption (VPLE) Insurance Program and the Wisconsin Brownfields Insurance Program (WBIP). The VPLE Insurance Program was established in 2001 by Wisconsin's Department of Natural Resources (DNR) in conjunction with the Brownfields Study Group (BSG) State Environmental Broker, and the State Risk Manager. The VPLE Program is designed to allow the State to issue timely liability relief to developers using natural attenuation of groundwater as a remedy at brownfield sites. Under the Program, eligible participants may be granted a transferable certificate of completion (COC) by DNR that assures them that they are not responsible for further cleanup at a site due to past releases even if environmental standards change, the clean-up action fails, or the contamination is found to be more extensive than anticipated. To receive a COC before a site has reached groundwater standards, a developer pays a one-time fee. If natural attenuation fails, the State of Wisconsin pays a deductible and the insurer pays clean-up costs up to the policy limit. In other words, an insurance policy taken in the name of the State, protects the State from certain financial risks in the event further remediation is needed. The fee paid by the program participant pays, for the most part, the State's environmental insurance premium, although a small amount is deposited into a fund to pay deductibles if the State should file claims in the future. The fees are based on previous uses and the size of the insured property. For instance, the premium on a site with a former heavy industrial use is more than three times that of a site with a former residential use. The insurance policy has a \$10 million aggregate limit and \$1 million sublimits for each site. The policy term for each site is ten years.

The WBIP was initiated in November 2006. This program differs from the VPLE Insurance Program in that developers are the insured parties. WBIP involves the use of a single insurer that offers a 10% discount on pollution liability policies. No subsidies are offered. Developers negotiate their own coverage and premiums. The insurer uses the company's policy form, but a state negotiated endorsement is attached. Any developer that has a DNR approved Phase I and Phase II Site Investigation completed, is eligible for the discounted insurance under WBIP.

**Recommendation: Further Investigation.** *Further investigation of existing and proposed insurance program models is necessary before Connecticut overhauls its existing brownfield insurance programs.*

**Why?** There is no evidence to suggest that a comprehensive brownfield insurance program patterned after existing programs or proposed program models would be more beneficial than other types of brownfield assistance such as grants, low interest loans, tax credits or subsidies for site assessments. The Task Force did not hear any testimony other than anecdotal accounts from insurance company representatives and insurance brokers, as to the value of state-sponsored environmental insurance programs in promoting brownfield remediation. Indeed, Peter B. Meyer, PhD, who has co-authored a number of reports on existing state brownfield insurance programs, testified that there was no evidence to suggest that brownfield projects would not have gone forward but for a state environmental insurance program.

In addition, there are at least five program models currently in existence. Each model has certain advantages as well as problematic aspects. The Massachusetts BRAC Insurance program is, by all accounts, considered a success. But, it was initially funded with \$15 million of state monies. Wisconsin's program also has some appeal as participants who receive a certification of completion are provided with liability protection for off-site contamination and future changes in law. This model is quite attractive; however, to be applied in Connecticut, the State would either purchase the policy directly or would essentially self-insure. In either event, the State would have to provide the financial resources. However, at this time, the state has demonstrated a willingness to offset the cost of premiums through the existing programs on a per-project basis. For now, the Task Force believes this is sufficient. Additional time is required to evaluate each of these program models and to determine the relative effectiveness of each program and their acceptance among stakeholders.

#### **D. ORGANIZATIONAL CHANGES**

In the past year, progress has been made to institute the organizational reforms recommended by the Task Force. The Office of Brownfields Remediation and Development, created by the General Assembly in 2006, has begun to take form. The OBRD is an operating office located within DECD. The State has initiated a nationwide search for a director to head the OBRD. Significantly, this director will report directly to the Commissioner of DECD. In the interim, OBRD has been staffed by one DECD employee, who has begun the process of coordinating with the other State agencies, overseeing an OBRD website, handling public inquiries and conducting outreach programs in a number of communities.

In December 2007 a Memorandum of Understanding ("MOU") was entered into among "partner agencies" responsible for Brownfield redevelopment in Connecticut including DECD, DEP, DPH and CDA. The purpose of the MOU is to (i) delineate each partner agency's responsibilities with respect to the OBRD, (ii) foster cooperation among such agencies to create a process for the remediation and redevelopment of brownfields

on an expedited basis and (iii) promote the OBRD as the institutional focal point to address brownfields issues in the State of Connecticut.

Under the MOU, the partner agencies have made a number of commitments to the State Brownfield initiative:

1. Agency Liaisons. Each partner agency will designate a staff member to serve as liaison between their agency and the OBRD interagency working group.
2. Coordination. Meetings will be held on a regular basis among agency liaisons and the OBRD and on an “as needed” basis among agency heads.
3. Pilot Programs. The OBRD will coordinate with the partner agencies to implement the municipal pilot program.
4. Marketing/Outreach. The partner agencies will work through OBRD to establish a comprehensive marketing and outreach program.
5. Coordination of Initiatives. The partner agencies will coordinate legislative, regulatory and policy initiatives geared towards brownfields.
6. Data Collection. Partner agencies will contribute data for the purpose of creating a single brownfield site inventory to be managed by OBRD.
7. Applications. Partner agencies will assist in the (a) preparation of a common application for state-assisted brownfield redevelopment; and (b) the evaluation of particular applications for state assistance.
8. Technical Assistance. The partner agencies will provide OBRD with necessary technical support for the purpose of OBRD handling inquiries and providing assistance to the public on brownfield issues.

As of the date of this Report, some progress has been made to implement the goals of the MOU. The partner agencies have designated their liaisons and at least some of the liaisons have been meeting on a regular basis. Representatives of the OBRD, DEP and CDA have engaged in a number of outreach meetings with municipal officials, and developers and manufacturers. The partner agencies have begun to develop a common application.

Although the foregoing activities are positive steps, real substantive progress towards creating a meaningful OBRD and a comprehensive State brownfield program will not occur until State decision-makers allocate the necessary resources to properly staff the OBRD and the partner agencies.

**Recommendation #1: Staffing.** *OBRD, DEP and DECD require staffing and annual organizational funding to implement the important brownfield programs and initiatives adopted in recent years. We strongly recommend:*

- a. DEP. Hire and/or assign new personnel dedicated solely to brownfield issues. The Task Force recommends the creation of a separate brownfield section, headed by a supervisor and supported by at least four staff members at the Environmental Analyst 3 level. Additional funding, adjusted annually, must be appropriated by the Legislature to hire these new employees.
- b. DECD. Enable the DECD Commissioner to reclassify existing positions in her department so that she can hire more program managers, fiscal analysts, planners, project managers and program educators dedicated to brownfield issues. The Department of Administrative Services (“DAS”) should make the reclassification a priority.
- c. OBRD. The Director of OBRD should be selected without delay. Once selected, the appropriate support team including program managers, at least one planner, one environmental analyst and one educator/marketer should be hired.

**Why?** The successful implementation of the State’s brownfield initiative cannot be achieved without the State’s commitment of additional staffing and funding to the DEP, DECD and OBRD. These State agencies are blessed with highly qualified and dedicated professionals. Nevertheless, without additional personnel possessing the appropriate skill sets, these partner agencies will not be able to implement the policies and programs proposed by the Task Force and adopted by the State. DEP and DECD are already understaffed in critical positions. For instance, the average caseload of a DEP remediation division analyst is approximately 150 cases-triple an optimum caseload. This caseload prevents staff from working on and processing brownfield sites as quickly as they should. Likewise, DECD needs more program managers, planners, fiscal analysts and educators but has not been able to hire these important staff members because of delays in the reclassification of staff positions.

In 2007, the General Assembly failed to appropriate any funding for additional staff members dedicated to brownfield issues. As a result, the programs created through recent legislation have not become operational. For example, the brownfield pilot program established by the Legislature in 2006 has not been implemented as of the date of this report. More importantly, this lack of funding for appropriate staffing has sent a bad message to stakeholders in the brownfield community regarding the State’s commitment to remediate and redevelop Connecticut’s brownfields. The Task Force hopes that the State will correct this problem in the 2008 legislative session.

**Recommendation #2: 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, the Office of Responsible Growth, 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 and meetings sponsored by CBIA, CCM, COST, EPOC, NBA, CEDAS and regional chambers. Priority should be given to workshops regional authorities to train their members.
- 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 State's brownfield initiative.
- d. A website has been developed and is maintained by the OBRD. This website is intended to serve as the primary medium for information regarding all aspects of the State's brownfield program. The website should be refined by adding: (a) an alert feature, (b) improved linkages to National Brownfields Association, CBIA and DOT, (c) interactive educational tools, (d) linkages to relevant brownfield legislation and (e) a listing of OBRD staff members and liaisons from participating State agencies. The website needs to be updated on a weekly basis.
- e. A Brownfield 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?** This recommendation is a holdover from the 2007 Task Force Report. Additional input from speakers before the Task Force as well as recent marketing efforts of the OBRD have confirmed the critical role which education and outreach will play in the State's brownfield initiative. Brownfield remediation and development involve a complex maze of financing programs, regulatory requirements and transactional issues.

Relatively few stakeholders have a comprehensive understanding of these areas. Insufficient knowledge will result in lost opportunities for municipalities, economic development agencies, business owners and private developers.

**Recommendation #3: Administration of Funding.** *The OBRD should review, coordinate and administer the funding programs within the respective authority of each agency recommended in this Report. The Brownfield funding programs should be streamlined and transparent and published procedures developed, 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. DECD needs to have a capital budget to administer the programs set forth above.*

**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. The OBRD should coordinate the various expertise of each agency in the process. The MOU, in a broad sense, addresses this issue, but since the actual implementation of funding programs envisioned by the Task Force has not taken place, the Task Force believes that this recommendation merits further consideration.

For any developer, municipality or non-profit to believe in the DECD programs, that their project will be appropriately considered, competitive and funded in a timely way, DECD should have a capital budget to administer as set forth above. The Urban Sites program or resorting to the State Bond Commission is not a viable method to fund the vast majority of these Brownfield developments. They should be utilized for the rare, large redevelopment.

**Recommendation #4: Additional OBRD Activities.** *The OBRD should concentrate on the following activities:*

1. Establish a strong linkage between brownfield remediation and 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 organizations to work with municipalities, manage projects, and coordinate funding and service delivery.
3. Create an annual report based on measurable standard 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 brownfield pilot program with the five municipalities, as required by P.A. 07-233 upon receipt of funding.
6. The OBRD, through DEP, should maintain a database of all institutional controls at sites throughout the State. This database should include ELURs and engineering controls. The information should be searchable on the State GIS system.

**Why?** This recommendation is essentially the same as that contained in the 2007 Task Force Report. It highlights additional areas of concentration for the OBRD. In that the OBRD has yet to become fully operational, the Task believes it is appropriate to remind policy implementers of other critical areas to be promoted by the OBRD.

## **E. OTHER RECOMMENDATIONS**

### **1. RENEW THE TAX INCREMENT FINANCING (TIF) PROGRAM**

CDA administers a very important Brownfield redevelopment tool through tax incremental financing (TIF). This TIF tool is due to expire in 2008. If it expires, it prohibits CDA's ability to finance, among other economic development activities, Brownfields redevelopment. The TIF is a very powerful incentive that provides the local government with a significant tool to assist in Brownfields redevelopment in its community. TIFs marry state and local interests and provide a source of funding to a development beyond a grant and loan program and tax credits. Many states have TIF programs and they provide important financial incentives to Brownfields developers and municipalities that want to attract projects. TIFs, if used by a municipality and CDA on a piece of property that is abandoned, can only serve to expand the grand list once the property is restored to productive use.

Last year, the Task Force recommended expanding the TIF program to cover remediation projects that supported not only significant new economic activity or employment but also that provided residential or mixed use development. Public Act 07-233 incorporated our recommendations. It would be a big step backwards if the TIF program were not reauthorized in this state and be a serious blow to Brownfield redevelopment. Eliminating such a very important tool does not send a strong message that Connecticut is looking for a comprehensive, strong and robust Brownfields program. If anything, it sends a contrary message. Therefore, the Task Force urges the General Assembly to renew the TIF program. Going a step further, the Task Force recommends that the sunset provision of the TIF program be eliminated and TIFs be made a permanent program of the State of Connecticut.

*Recommendation: To amend C.G.S. § 32-23zz to delete subsection (f) and eliminate the sunset provision of the TIF.*

**2. PROVIDE SITE ACCESS WITH LIABILITY RELIEF TO MUNICIPALITIES**

A key component to the State's Smart Growth Plan is the utilization of existing commerce centers for further economic development. These areas already contain the necessary infrastructure (i.e. roadways, sewer lines and water lines) and a trained workforce. By utilizing these existing areas, the State will be able to preserve its greenfield areas. Unfortunately, there is a shortage of undeveloped land in many of Connecticut's commerce centers. State and local officials believe that the remediation and redevelopment of brownfield sites located in these areas is a critical solution to this problem.

A major obstacle to the redevelopment of these brownfield properties is a lack of understanding regarding the type and extent of contamination within these properties. Municipal decision-makers and potential developers are reluctant to acquire these brownfield properties without a thorough understanding of their environmental condition because the financial and liability uncertainties create an unacceptable level of risk. As a result, these brownfield sites remain neglected as municipal leaders and potential developers pursue other properties with less risk.

Often times, an environmental investigation clarifies the risk and removes the uncertainty, which, in turn, allows municipalities and developers to make informed decisions to acquire a site.

The State, in recent years, has made some progress in creating a comprehensive brownfield program. And, the programs above are intended to provide clear and accessible programs and funds to municipalities and further the progress. However, without access to sites for environmental investigation, many brownfields will remain neglected. To address this issue, the Task Force recommends that Section 22a-133dd be expanded to allow municipalities and their LEP designees greater access to sites for the purpose of performing environmental assessments and investigation. And, if the municipality performs such investigations, it shall be permitted to do so without the concern that liability for the contamination will attach.

*Recommendation: To amend Section 22a-133dd of the Connecticut General Statutes to permit any licensed environmental professional retained by a municipality access to certain real properties for the purpose of conducting an investigation and without the municipality incurring any liability for the work or the contamination encountered as follows:*

**Sec. 22a-133dd. Entry of licensed environmental professional onto certain property.** (a) Any licensed environmental professional employed or retained by a

municipality may access and enter, without the municipality incurring any liability from the state or other any other person for such entry, assessment or investigation or for any condition encountered, upon any property within such municipality for the purpose of performing an environmental site assessment or investigation if: (1) The owner of such property cannot be located; or (2) such property is encumbered by a lien for taxes due such municipality; or (3) upon a filing of a notice of eminent domain[.]; or (4) the municipality's legislative body finds that such investigation is in the public interest of determining if the property is underutilized or should be included in any undertaking of development, redevelopment or remediation under Chapters 130, 132, 445 or 588l of the General Statutes; or (5) any official of the municipality reasonably finds such investigation necessary to determining if such property presents a risk to the safety, health, or welfare of the public, or a risk to the environment. The municipality shall give at least ten (10) days notice of such entry, prior to the first such entry, by first class mail to the property owner's last known address. The immunity offered in this section extends only to contamination or pollution that was not created or established by or otherwise attributed to the municipality.

(b) The owner of the property may object to such action by the municipality by filing an action in the superior court, provided that any objection is limited to the owner affirmatively representing that it is diligently investigating the site in a timely manner and that any municipal taxes owed, if any, will be paid in full.

### **3. LIABILITY RELIEF**

The simple reality is that Connecticut is replete with abandoned sites that are contaminated. By virtue of being at the forefront of the Industrial Revolution, Connecticut has sites that have been contaminated since the Civil War, if not before. The entities that caused this contamination are, in some instances, defunct corporations that have been out of business for decades. There is no viable responsible corporation from which to extract funding for remediation. As a result, Connecticut holds current and new purchasers of property liable for such costs of remediation, regardless of whether they had any role to play in the contamination. This draconian system of liability results in prospective purchasers of contaminated property refusing to purchase such sites for fear of being responsible not only for the historic contamination on a site, but also for any contamination emanating from that site.

Such contamination, for which there is no truly responsible party, is a persistent problem in the remediation of sites in Connecticut. What to do about such contamination is a public policy debate of broad scope and with wide-reaching implications. This is a policy debate which needs to be taken up by the General Assembly and carefully examined. There is, admittedly, no easy solution to this problem, however, this situation is the crux of why Brownfield properties are so difficult to redevelop. The state needs to make a conscious decision as to whether it is appropriate to continue on the path it is currently on, thereby limiting the amount of redevelopment that will be available to

Brownfield properties, or whether the state is truly interested in addressing this problem in an equitable manner that will allow for the remediation of properties, increased tax revenue to municipalities, improved environment and health benefits and increased competitiveness for Connecticut business.

From the perspective of the Task Force, 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 (and the EPA). Likewise, these parties need relief from post-remediation claims by third parties. Prospective property owners also may likely require liability relief that protects a new purchaser (or an existing property owner if that property owner did not cause the contamination itself) from chasing the contamination off-site. In the latter example, the state would assume this orphan share, which to a very large degree it holds already because the site remains unremediated and no one is taking action. To the extent that the state elects not to assume such an orphan share, an even stronger case is made for the funding programs referenced above to incentivize the new owner to redevelop the site. However, all such relief must be balanced against the state and the property owner retaining liability (or cost recovery) claims against viable, responsible parties who have elected to ignore or be recalcitrant in achieving the state's remedial goals.

In addition, the DEP has indicated that it is currently evaluating all of the state's remediation programs, and has publicly stated that it believes that all such programs (including, but not limited to, the Transfer Act, spill reporting and other remedial programs) should be reviewed to ascertain whether Connecticut has a remediation program in place that makes sense for its citizens. The Task Force believes that this is a worthy effort and that the DEP is the appropriate agency (with adequate stakeholder input, of course) to undertake such a comprehensive statutory review. The Task Force believes that liability relief should be part of the discussion with DEP and should be placed in the context of the recommendations of the Task Force. Any meaningful proposals related to third party liability and liability reform for third parties must be addressed in a larger context of the state's remediation program, funding programs and the other observations and recommendations made herein as a significant interrelationship exists. Nonetheless, the Task Force does believe that the General Assembly must look long and hard at providing significant protections to innocent purchasers who had nothing to do with contaminating a parcel and are seeking to redevelop that parcel to productive reuse. While the notion that "the polluter pays" is deeply entrenched in Connecticut's remediation programs, brownfield redevelopers are by their very nature not polluters. We need to look long and hard at providing adequate protections to these individuals so that there will be sufficient incentives for them to remediate these parcels.

#### IV. CONCLUSIONS

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

- (1) Provide meaningful and available funding to DECD to administer the programs.
- (2) Develop new grant and loan programs that are clear, understandable, transparent, available and process the applications efficiently and in a timely way.
- (3) Consider a Brownfields Tax Credit program as another tool available to developers and site owners.
- (4) Continued 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;
- (5) Renew the State's TIF program;
- (6) Provide site access and liability relief associated with such access clearly to municipalities; and
- (7) Develop an appropriate framework for liability relief that takes into account the status of the property owner.

In conclusion, the Task Force believes that a rigorous and comprehensive reform of the state's Brownfield programs is needed and ongoing oversight is essential. Studying other state's 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 or reconvening a Task Force, either in its current constitution or another, at the election of the General Assembly. As you can see, this Task Force is committed to this process and has learned a great deal about our state's programs, public perceptions, municipal concerns, and property owner, developer or user challenges, and other state programs. We believe there is more to do and we would be honored to provide further valuable insight to review the legislative reforms and as the State moves forward with longer term planning for Brownfields redevelopment.

## BACKGROUND

### Selected Publications Reviewed by the Task Force

Many of our speakers provided us with useful papers, power points, website materials and summaries of their programs, which will be submitted separately to the Committees. In addition, the Task Force relied upon various data provided by DECD, CDA/CBRA, the General Assembly's Office of Legislative Research, CHFA, the Connecticut Commission on Culture and Tourism, and DEP, and documents which are readily available and accessible on their websites. Other useful reference materials relied upon by the Task Force included:

*Case Study of State Incentives: Proposals to Make Strategic Investments in Brownfields Redevelopment*, by Evans Paull (Northeast-Midwest Institute) and Charles Bartsch (ICF International)(January 2008)

*Environmental Insurance*, by Gerald Barrett (OLR Research Report)(February 20, 2008)

*New York and Connecticut's Brownfield Clean-Up Tax Credits*, by John Rappa (OLR Research Report) (January 8, 2008)

*New York's Brownfield Cleanup Program Lessons Learned from the BCP Tax Incentives*, by Philip S. Bousquet, Esq. (November 19, 2008)

*Regional Roundup: New England State Brownfields Programs: Essential Programs and Contacts for New England Brownfields Development*, prepared for Brownfields 2006, (November 13, 2006)

*State Brownfields Remediation Tax Incentive Programs*, Memorandum by Barry Trilling, Anika Singh, and Alexander Glage (December 10, 2007)

*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)

*State and Local Non-Cash Tools and Strategies To Enhance a Brownfield Project's Bottom Lin*, by Charles Bartsch and Barbara Wells (Northeast-Midwest Institute) (October 2006)

## GLOSSARY OF TERMS

- 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
- CHFA**- Connecticut Housing Finance Authority
- CCM** – Connecticut Conference of Municipalities
- CDA** – Connecticut Development Authority
- CEDAS** – Connecticut Economic Development Association
- C.G.S.** – Connecticut General Statute
- COST** – Connecticut Organization of Small Towns
- DECD** – Department of Economic and Community Development
- DEP** – Department of Environmental Protection
- DPH** – Department of Public Health
- DOT** – Department of Transportation
- ELUR** – Engineered Land Use Restriction
- EPA** – United States Environmental Protection Agency
- EPOC** – Environmental Professionals Organization of Connecticut
- GIS** – Geographic Information System
- MOU** – Memorandum of Understanding
- NBA** – National Brownfields Association
- OBRD** – Office of Brownfields Remediation and Development
- OLR** – Office of Legislative Research
- OPM** – Office of Policy & Management
- PCB** – Polychlorinated Biphenyls
- State** – State of Connecticut
- Task Force** – Brownfield Task Force
- TIF** – Tax Increment Financing
- Transfer Act** – Connecticut Property Transfer Act, C.G.S. § 22a-134 et. Seq.