STAMP

Site Technical Assistance for a Municipal Project

National Brownfield Association

Summary of Recommendations

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Background

The Portland Development Commission in partnership with the City of Portland Bureau of Planning and Environmental Services along with Columbia Corridor Association, METRO, PGE, The Port of Portland, and the Oregon Economic Community Development Department ("Coalition") share a common goal in the desire to clean up contaminated sites and redevelop vacant and underutilized industrial land for new industrial uses in N/NE Portland. However, it is not the intent of the coalition to remove the obligations, financial or otherwise, of parties responsible for the contamination. The Coalition engaged the National Brownfield Association (NBA) to perform an analysis to investigate how best to spur redevelopment of approximately 400 non-contiguous acres, consisting of 25 parcels in Portland's industrial sanctuary. This work was completed under the Site Technical Assistance for a Municipal Project (STAMP) program developed by the National Brownfield Association.

Site Technical Assistance for a Municipal Project (STAMP)

STAMP is based on the theory of rapid cognition presented in the book *Blink* written by Malcolm Gladwell. Gladwell states that "thinking that happens in a blink of an eye is based on thin slicing information and pattern recognition. We live in a society dedicated to the idea that we're always better off gathering as much information and spending as much time as possible in deliberation. There are lots of situations--particularly at times of high pressure and stress--when haste does not make waste, when our snap judgments and first impressions offer a much better means of making sense of the world."

Utilizing this theory NBA has found STAMP to be an effective way for a municipality to receive a quick objective analysis from an outside perspective - a chance to look at their development situation with a fresh set of ideas that are not constrained by the past. This approach allows for a cost effective snapshot solution that can be further explored or investigated.

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STAMP Team

The expert's selected for the team, were hand picked by NBA based on their individual experience and the unique site specifics attributes of the Portland site. The team was guided by Seth Hudson, Portland Development Commission and Robert Colangelo, NBA and included:

Name	Company	Expertise
Charlie Bartsch	ICF International	Government Brownfield Programs
Tom Bloomfield	Gallagher & Gallagher	Superfund Waterfront PRP Negotiations
Brad Hill	AGC Consultants	Project Development
Kenneth Ho	Cherokee Investment Partners	Brownfield Investment/Development
*Sven-Erik Kaiser	U.S. EPA	Federal Programs
Kevin Matthews	AIG Environmental	Environmental Insurance & Liability Transfer
Kevin Noell	Terra Vita Development	Industrial Redevelopment

Additional background information on each expert is proved in Exhibit 1.

*Any opinions expressed are his own and do not necessarily represent the views of the U.S. EPA

The Assignment

The NBA's team of experts was asked to provide their insight and recommend models to foster redevelopment of currently vacant and/or underutilized industrial property in Portland's industrially zoned areas. They were challenged to be creative, think out of the box and apply solutions used at projects with similar situations around the country.

The Team was assigned to propose creative solutions for liability transfer that will enable investment and redevelopment to occur. Said solutions could include use of traditional federal, state and municipal programs or they may propose new strategies. These could include a combination of private and public sector financing or a private sector development scenario that would finance the pre-development and redevelopment of the area.

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The Process

Putting *Blink* in practice the NBA, with input from the Coalition, assembled a team of experts with expertise in finance, redevelopment, state environmental and economic programs, insurance and environmental law from its membership. Prior to the August 16th and 17th meetings, the City of Portland collected relevant site data and worked with NBA to summarize and package data for distribution to the team. The data summary included: a historical and environmental history of the area; demographic information; area sales and rental comparables; and a summary of government incentives for brownfield clean up and redevelopment. The NBA organized two conference calls with the team. The purpose of the first call was to explain the assignment, review relevant team expertise and to discuss site data that would be helpful for the team to analyze prior to the site visit. The purpose of the second call was to review the site data and the review the schedule for the site visit. The team traveled to Portland from August 16-17, 2007 to tour the area and met with a wide range of local professionals from the Coalition who provided detailed information through a question and answer session The STAMP team then met for five hours to formulate their recommendations and suggestions.

On August 16, the team visited the site and surrounding neighborhood and held the question and answer session with city stakeholders to discuss planning, infrastructure, sustainability, TIFs, and other local and state regulations. This session allowed the team to get clarification on the data as well as gain a better understanding of site conditions from city and state departments.

Study Area

The NBA study area is located along the Portland Harbor and is impacted by contaminates found in soil, river bottom sediments, and groundwater from past industrial operations. Environmental uncertainty regarding the cost to remediate, amount of time it will take to complete clean up and how liability will be apportioned among past and present property owners has chilled property transfers and development. This situation has caused properties where there is market demand to sit idle and undeveloped because of the environmental uncertainty.

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Overview of Background Information

The state of Oregon passed legislation in the early 1970s as part of the statewide land-use planning program which, among other things, created Urban Growth Boundaries as a way to control sprawl by increasing population density in urban areas. The City of Portland created industrial sanctuaries in 1980 which were established to encourage industrial growth in the city by protecting industrial districts from incompatible use such as: housing, which is sensitive to industrial impacts; high density uses, which drive up land values and push out industry; and high traffic uses, which reduce freight mobility. The city of Portland has experienced increased growth over the last decade and property values have risen from this demand. Rising property values and market forces would most likely have pushed the redevelopment of residential and commercial projects, if the industrial sanctuary designation did not exist.

Environmental Issues

Past industrial operations have impacted soil, river bottom sediments, and groundwater in the area. In addition much of the heavy industrialized harbor was added to the U.S. Environmental Protection Agency's National Priorities List (NPL) in December 2000 as the Portland Harbor Superfund project. The initial study is focusing on the 6.2-mile section of river between Swan and Sauvie Islands. Despite the Superfund designation, widespread industrial expansion and modernization investments have been made in the harbor districts, following the recent recession (about $440 million on 36 sites since 2004). However, little investment has occurred on the unoccupied or unimproved brownfield sites, where new investors would face not only cleanup obligations associated with the target property but also a less predictable share of future liability for the harbor wide in-water cleanup and associated natural resource damages restoration. The uncertainty created by the designation has been cited as an obstacle to investment by prospective tenants, owner/operators and developers in reference to costs, time delays and liability associated with site remediation and regulatory action. Currently the area is undergoing a remedial investigation and feasibility study (RI/FS) which has been underway since 2001. A record of decision is anticipated to be released sometime in the next 5 years. This scenario has effectively taken precious industrial properties out of the market and inhibited the ability for the coalition to attract new investment and users to the area.

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The harbor districts are nearly built out and the land supply available for new developments is now limited primarily to brownfield sites. These opportunity sites along the harbor are the subject of this project, where development potential is constrained by possible Superfund liability for future in-water cleanup. These sites vary in the degree of environmental impact from past operations, past and current relationship to sediment pollution, and the existence of structures. The cost to remediate these sites to industrial cleanup standards, meet in-water liability requirements, and prepare the land for development has not been estimated.

Assumptions

On August 17 the team reconvened for an open discussion. The first part of the discussion consisted of breaking the project down and obtaining consensus among the group on assumptions and inferences. The group's assumptions included the following:

- The Superfund area includes at least 70 Potential Responsible Parties (PRP's)
- The study area consists of 25 sites
    - Total 400 acres
    - Sites range from 5-60 acres
- The industrial sanctuary consists of
    - 1,000 sites in 6,000 acres
- The Superfund cleanup cost is unknown and could be in the $100s of millions
- A record of decision is expected to be released within 3-5 years
- Land value is approximately $5 per square foot ("clean" fair market value), for a total of about $87 million
- All parcels in the study area are vacant or unimproved, or demolished to grade
- There is strong demand for industrial parcels, ranging from
    - 5-10 acres
    - 10-20 acres
    - 50+ acres
- The area is zoned industrial and should remain industrial
- The industrial area has good access to river, rail and interstate roads, and appropriate utility infrastructure for industrial use
- There is a desire in the city to promote infill development

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Based on the assumptions listed the team deduced that the major impediment for transferring and redeveloping the 25 parcels located in the industrial sanctuary are the following:

- Current property owners are uncomfortable with selling properties due to the environmental unknowns
    - Unknown cost to clean up the river sediments and source of contamination
    - Uncertainty to when a record of decision will be issued and what the remedial solution will be
    - Uncertainty to how the cost for past and future environmental liabilities will be resolved and apportioned

The team agreed that the following issues are a result of the current situation:

- Increased vacancies and idle industrial properties
- Diminished industrial property values, even with access to roads, river & rail
- Diminished property taxes due to state legislation allowing for diminution in value from environmental impact – owner's incentive to "mothball" properties
- The industrial sanctuary does not have an optimized land use. Through planning properties can be reconfigured so that a higher industrial density can be achieved.

The STAMP Team Recommendations

The STAMP team recognizes that the Portland Harbor possesses unique market attributes, is affected by Superfund and is bound by unique state and local regulations. These variables have created a complex situation, but it is not without precedent and the team is confident that there are viable solutions.

It has been reported that harbor-wide investments have been strong with the City tracking over $440M in private and public sector investments on 36 sites since 2004. These investors are targeting "cleaner" sites and avoiding the study area resulting in lost opportunities – properties are not transferring, jobs not being created; Property tax dollars being lost; and property owners' liabilities are exacerbated by a lack of action. At the same time, the team recognizes that this area is situated along a river, has interstate access in close proximity and is serviced by two railroad lines. These unique attributes make this property an ideal location to site industry that adds value to commodities and the same factors have contributed to existing harbor industry investment successes. The team thus offered recommendations in a staged approach.

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Recommendation I

Recognize the Cost of Doing Nothing

The first recommendation was to understand that there is a cost of doing nothing. The costs include financial losses in terms of jobs, tax revenue and economic growth, stigmatization of the area, possible exacerbation of the environmental impact and taking industrial sanctuary property out of play within the urban growth boundary. This stagnation not only increases pressure to convert agricultural lands to industrial use, which creates additional high costs associated with adding infrastructure, but also thwarts the carefully developed state land use planning laws intended to protect open space and agricultural and prevent urban sprawl.

Recommendation II

Identify a Champion and/or Champion(s):

Identify a clearly-defined point person or inter-city/inter-agency team that can act as a champion of this process. This Champion(s) would study the STAMP recommendations determine if the recommendations are feasible and move the process to implementation. The champion(s) would need to be able to reach across jurisdictional lines, act as the face of the project and take ownership of the project. Specific tasks to focus on include:

- Provide education and outreach to current owners (this may best be outsourced to a third party)
    - Include information in environmental liability – the cost of doing nothing, the cost of waiting and the current options that exist for managing liability. Also differentiate between upland and in-water environmental liabilities
    - Provide information on current government programs and the incentives that are available to address liability and cleanup issues
- Focus on producing parcel-specific data, including economic and demographic information for each parcel that may facilitate transactions
- Create profiles for individual properties, including
    - Site infrastructure data
    - Geotechnical data and engineering solutions
    - Upland and in-river environmental data and solutions
- Contact other waterfront cities (New Bedford and the St. Paul Port Authority) that have taken an aggressive public sector approach to solving similar site-specific issues and apply lessons learned to the Portland parcels

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- Create a standard operating procedure for dealing with potential buyers and tenants. This will include dealing with federal and state regulators and city officials to facilitate transactions.

Recommendation III

Creation of a model purchase and sale agreement:

Look into the creation of a model transfer agreement that addresses common concerns with the purchase and sale of the 25 parcels in the study area. This, combined with an education and outreach effort, would allow for one-off transaction to occur by building consistency, efficiency and a well-though-out plan for addressing common deterrents to transferal.

The Purchase Sale Agreement (PSA) should at a minimum include;

- A menu of available government incentives that could apply to offset environmental remediation and infrastructure improvements, an implementation of green building and sustainability initiatives:
    - Brownfields Economic Development Incentive (BEDI)
    - Section 108
    - New Markets Tax Credit (NMTC)
    - Economic Development Agencies (EDA)
    - Industrial Development Bonds (IDBs)
    - Variety of state incentives
    - Expedited permitting
- Provide practical indemnification language for addressing past and future liabilities
- Provide language that differentiates and addresses upland and in-water environmental liability and cleanup
- Provide language that will address standard transfer issues (e.g., price, inspection period, down payment, due diligence period, reps and warranties, timing of cleanup, and closing)

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Recommendation IV

Select a Master Developer

The Master Developer would be responsible for negotiating purchase sale agreements with individual property owners in order to gain control of multiple parcels of land and would perform vertical build out in accordance with a development plan for the area. This improves economies of scale for remediation and redevelopment by having one entity in control

Recommendation V

Creation of a public private partnership to Own Property

The STAMP team recommends the creation of a legal entity in which all 25 properties could be transferred to, this could be a public/private partnership. This new legal entity would manage and finance the remediation of upland environmental liabilities, geotechnical engineering, infrastructure development and vertical build out.

The STAMP Team Feels that this option benefits the current property owners because it allows them to deal with upland environmental liability by pooling government resources and using disposition and lease proceeds to offset a portion of or all of the cost. It also allows them more efficient access to resources they could not acquire singly. These property owners would retain their in-river environmental liability and would indemnify the new legal entity of this liability. Further the STAMP Team feels that the benefit to the city in this option is that it allows all sites to be redeveloped instead of on a one-off basis.

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Exhibit 1: STAMP Team

Charlie Bartsch
Vice President, ICF International, Washington, D.C.
A national expert with extensive experience and knowledge of federal and state financial programs and experience applying them in a creative manner to redevelopment projects.

Tom Bloomfield
Partner, Gallagher & Gallagher, Boulder, CO
A leading expert in negotiating creative liability and cost allocation settlements for PRPs involved with Superfund sites. A former U.S.EPA Deputy Regional Counsel, Mr. Bloomfield is an environmental attorney with extensive experience working with waterfront and sediment properties and risk transfer agreements for private and public entities.

Kenneth Ho
Senior Associate, Cherokee Investment Partners, Denver, CO
A leading developer with a planning background that works for the largest private equity fund financing brownfield redevelopment. Has extensive experience structuring property acquisition and managing redevelopment projects.

Brad Hill
AGC Consultants, Bend, OR
A leading consultant that brings project management, global site selection expertise along with a unique political perspective.

Sven-Erik Kaiser
U.S. EPA Office of Brownfields and Land Revitalization, Washington, DC
A senior analyst and attorney with the U.S. EPA Brownfields Program. Sven-Erik has worked with many communities throughout the country and brings knowledge and experience with federal, state and local brownfields programs.
Any opinions expressed are his own and do not necessarily represent the views of the U.S. EPA.

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Kevin Matthews

Director, AIG Environmental, Washington, DC

Industry leader of innovate environmental insurance products. Kevin brings a unique combination of skills that include insurance, knowledge of federal environmental regulations, and liability transfer. He previously worked for USEPA Administrator Carol Browner. He also has been heavily involved in the development of R-PAT (Recovered Property Protection and Assurance Trust) concept, which offers an alternative solution to Superfund liability.

Kevin Noell

Managing Director, Terra Vita Development, San Diego, CA

Leading specialty brownfield developer; has developed more than 6 million square feet of industrial and commercial residential mixed-use projects. Kevin is focused on mid-market brownfield projects with an industrial or commercial/residential mixed-use.

Robert Colangelo

Executive Director, National Brownfield Associations

Robert is a pioneer in the Brownfield industry and is founder of Brownfield Development LLC, Environomics Communications, Inc. publisher of Brownfield News magazine and the National Brownfield Associations. He provides a national perspective and a transactional focus to the team.

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