Attachment E

Task 3: Modifications to Existing Development Tools

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Prepared by:

CASCADIA PARTNERS
ECONorthwest ECONOMICS • FINANCE • PLANNING
Stantec
FCS GROUP
Development Research Partners

Introduction

Oregon has a range of existing tools and policies that impact site readiness. This report details eight tools and policies that influence site readiness, identifies specific issues, and proposes changes that can improve the effectiveness of each.

Making changes to existing programs can be faster and less costly than adopting new programs. Most of the human infrastructure - state, regional and local systems, staff and procedures - are already in place. Some of the changes recommended in this report are narrow, requiring a few language changes in the Oregon Revised Statutes, for instance. Others are more structural changes that will require a longer, more complex process to implement. The goal of Task 3 is to capture both quick, meaningful changes, but also challenge state leaders to consider bigger and bolder change in certain areas.

It is important to acknowledge that if a tool becomes more effective, it is likely to be more frequently and widely utilized. As such, most of these changes will likely result in an increase in needed staff capacity and increased program demand. The goal of all these changes is to unlock the economic potential of the region's employment lands, many of which have been stuck in the site readiness pipeline for years. If successful, the additional tax revenue and job growth from expanded employment land development should help compensate for increases in funding and staff resources required to make these changes.

The tools and key changes explored in this section include:

- **Land Bank Authorities (LBAs):** changes that expand the types of lands that can be included within the jurisdiction of a LBA beyond just brownfield sites.
- **Advanced Wetland Mitigation Planning:** changes that can improve the speed, efficiency and certainty around delineation and pre-development approval, support mitigation bank formation, and explore more regional development planning and approval where mitigation banks are not present.
- **Tax Increment (TIF)/Urban Renewal Financing:** changes to expand access to early capital, comingle more private capital and generate additional sources of revenue.
- **Local Improvement Districts (LIDs):** changes to expand upfront capital, broaden what entities can form LIDs, and expand local capacity to manage LID formation and operation.
- **Oregon Cleanup Funds:** changes to expand eligibility criteria for brownfield revolving loan/grant program and incentivize private matching dollars to better leverage public funds and dedicate a portion of Metro solid waste funds to brownfield remediation.
- **System Development Charge (SDC) Financing:** changes to clarify local ability to subordinate SDC financing liens to other debt, such as construction debt and permanent financing.
- **Conversion of Gravel Pits:** changes to allow for greater adaptation of zoning for reclamation plans over time, and increased site owner accountability for existing reclamation plans and local engagement throughout the process.
- **Regionally Significant Industrial Site Readiness (RSIS) Program:** changes to allow for private site readiness expenditures to qualify for tax benefits and broaden access to the program.

In addition to the above modifications to existing programs, funding support for these programs is needed to expand the site readiness benefit to employment lands statewide. Potential state investments to explore include:

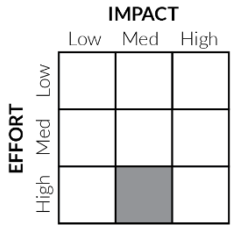
- $5 million capitalization of a loan fund to provide seed funding for LBAs,
- Early stage funding for TIF/URA and LID revolving loan funds,
- $10 million re-capitalization of the state brownfield revolving loan/grant fund,
- Dedication of a portion of Metro solid waste funding for brownfield cleanup within the Portland metro urban growth boundary (UGB), and
- $5 million capitalization of the loan portion of the RSIS program.

The proposed modifications to existing tools included in Task 3 require a mix of strategies. Some require state statutory and/or administrative changes; others require local administrative changes; and some require a mix of statutory and regional/local administrative changes. There is a range of benefits that can be expected and a range of level of effort required. The matrix on the next page reflects this.

All Tools: Effort and Impact Matrix

Tool / Changes	Effort	Impact	Change Needed
Land Bank Authority	**High**	**Medium**	
Broaden authority to include employment lands	High	Medium	State
Advanced Wetland Mitigation Planning	**High**	**High**	
Proactive wetland maintenance education	Low	Medium	None
Early delineation	Medium	Medium	None
Establish new mitigation banks	High	High	Regional
Out-of-service area wetland exchanges	High	Medium	State
Expand Statewide Wetlands Inventory tool	Medium	Medium	None
Formalize Advance Aquatic Resource Plans	High	High	Regional
Establish Regional General Permit	High	High	Regional
Tax Increment Finance / Urban Renewal	**High**	**High**	
Region-wide revolving loan funds	High	High	Regional or State
Form an Economic Development Corporation	High	High	Regional and/or Local
Local Improvement Districts	**High**	**High**	
Remove barriers to formation	High	Medium	State
Revolving loan fund	High	High	State
Mitigate foreclosure risks	Low	Medium	Local
Oregon Cleanup Funds	**High**	**Medium**	
Oregon Brownfields Redevelopment Fund changes	High	Medium	State
Dedicate a portion of Metro solid waste fee to remediation	High	Medium	Regional
System Development Charges	**Medium**	**High**	
Clearly allowing second position SDC liens	Medium	High	State
Gravel Pit Conversion	**High**	**Medium**	
Allowing changes to outdated reclamation plans	High	Medium	State
Increased enforcement of reclamation plan	Low	Medium	State and/or Local
New zoning prior to redevelopment	Low	Medium	Local
Regionally Significant Industrial Site Readiness	**High**	**High**	
Allow tax reimbursements for private landowners	Medium	High	State
Reducing wage threshold	Medium	Medium	State

Land Bank Authority



Site readiness challenges addressed:

- Site assembly / aggregation
- Infrastructure

Tool description:

In 2015, the State or Oregon created enabling legislation (House Bill 2734 codified in Oregon Revised Statutes 465.600 to 465.621) whereby cities and counties can create Land Bank Authorities (LBAs) for brownfield sites as municipal corporations independent of their sponsoring jurisdiction. Brownfields are defined as real property where expansion or redevelopment is complicated by actual or perceived environmental contamination. As it stands, the definition for brownfields is fairly broad and covers many but likely not all employment land sites. This statute authorizes LBAs to acquire, rehabilitate, redevelop, reutilize or restore brownfield properties. A LBA may directly undertake these actions, or it may opt to contract with other public or private entities for any and all of these purposes (using mechanisms such as public private partnerships). The statute gives LBAs broad powers, including the following:

- Acquire, hold, lease and/or convey real property
- Remediate environmental contamination
- Borrow funds as a tax-exempt entity
- Enter into contracts
- Solicit and accept grants, gifts or other assistance from a public or private source
- Develop priorities for the use of property of the authority that may include, but are not limited to, public use, affordable housing, open space and commercial or industrial development.

The brownfield LBA is a new tool and is in the early stage of testing the application and effectiveness at the local level. To date, Clackamas County is the only jurisdiction that has agreed to sponsor a LBA and is in the process of establishing that authority.

Tool challenges:

LBAs represent an important opportunity for brownfield development in Oregon. However, the existing law poses a challenge in that is available to brownfields only; the tool is not available to "clean" sites. In other words, Oregon does not have a provision for *Industrial* or *Employment* land bank authorities, which may focus on acquiring brownfield and non-brownfield sites. Although the definition of brownfields is fairly broad and could potentially cover a majority of non-greenfield and former agricultural employment lands in the region, there may be an opportunity to expand the benefit of LBAs to all employment lands. Public control of property (i.e., through a LBA) is one of the best ways that a jurisdiction can control the fate of its employment lands. For instance, because LBAs are non-profits, they can patiently assemble parcels in key employment areas without the carrying costs of property taxes. However, if a key piece of property in an assembly is not a brownfield, then a LBA could not acquire the property as part of a larger site assembly under the current restrictions in the law.

Changes proposed:

Modifying the LBA statute to expand the classification of properties over which a LBA may have authority could provide broader benefit to employment lands not classified as brownfields. That expansion would include "employment lands" in addition to the existing brownfields. The changes could be as simple as adding a definition in ORS 465.600 defining "employment lands"; and then where reference is made in the enumerated powers of a LBA related to *brownfields*, add *employment lands*. For instance, ORS 465.609 (1) might be amended to read as follows:

"An authority shall have all powers necessary to accomplish the purposes of acquiring, rehabilitating, redeveloping, reutilizing or restoring brownfield *or employment land* properties…." (new language in *italics*).

These relatively modest changes would be consistent with the enabling legislation, which recognized "commercial or industrial development" as a suitable "priority use" for a LBA's efforts. This expanded authority of LBAs would allow jurisdictions to better achieve their goals related to employment land site readiness.

Another recommended change would be to add language which establishes the creation of a revolving loan fund to support LBA pilots. Model language could be drawn from Business Oregon's Brownfields Revolving Loan Fund.

On a parallel track on the revenue side, capitalization of a revolving loan fund to test the LBA concept is recommended as seed funding for land acquisition and remediation is key to getting an authority up and running. Sale of remediated properties will provide resources for reinvestment by the LBA. An initial $5 million in capitalization is recommended.

Implementation steps:

1. Consult with Oregon Department of Environmental Quality (DEQ) regarding brownfield sites to confirm that there are sufficient non-brownfield sites (known or potential) to justify legislative amendments as discussed herein.

2. Once the Clackamas County LBA is operational, interview staff to determine if there are other legislative revisions that can be addressed based on their experience.

3. Build local support for the changes to the LBA statute by meeting with the Oregon Brownfields Coalition, environmental advocacy organizations, partner agencies such as Business Oregon, and industry groups such as NAIOP. Ideally, these local organizations would jointly endorse legislative action.

4. Build support at the state level by meeting with elected officials and others who will be able to influence or decide upon proposed legislative revisions to ORS 465. It will be important to secure a legislative sponsor to request draft legislation (a House or Senate Bill) and support legislative advocacy and action on the bill once introduced.

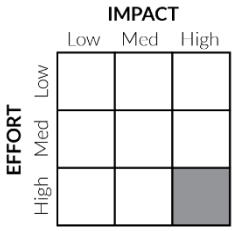
5. Seek $5 million to capitalize a LBA revolving loan fund to test the LBA concept. This would require Joint Ways and Means Committee approval.

Considerations:

Brownfield and environmental advocates might see these proposed statutory changes as a dilution of the LBA focus, which currently is restricted to brownfields. The counter to this is that the creation of any tool that promotes more efficient use of employment lands within the UGB helps serve the greater environmental good (i.e., protecting lands outside the UGB). Meeting with environmental advocacy organizations interested in the LBA in advance of legislation may help forestall the risk of potential resistance to the proposed statute amendments. Proud Ground, a low-income housing advocacy group, is exploring statutory changes of the LBA to support low-income housing development. There may be an opportunity to find common ground with this and other stakeholder group to expand the benefit of the LBA.

Before proceeding with legislative changes, it would be ideal to test the application of the existing LBA statute through the Clackamas County LBA pilot. Seed loan funding for the LBA program could be secured in advance to help move this pilot forward.

Advanced Wetland Mitigation Planning



Site readiness challenges addressed:

- Wetlands

Tool description:

Currently, for employment sites that have known or potential wetlands, new development on such sites are subject to a wetland fill permit approval process. The permit approval process may involve the following approvals: Section 404 of the U.S. Fish and Wildlife (USFW) Clean Water Act issued by the US Army Corps of Engineers (Corps), Removal-Fill Permit from the Oregon Department of State Lands (DSL), 401 Water Quality Certification from the Oregon DEQ, and local wetland approval.

As part of federal, state, and local approvals, the wetland feature must be characterized through field delineation and a delineation report that describes the mapping and characteristics of the wetland. The permits then require that the proposed development be evaluated in terms of its effects on the wetland. If an impact to a jurisdictional wetland (i.e., wetlands within the regulatory jurisdiction of federal and/or state law) is deemed present, the permit lays out mitigation provisions to offset impacts to wetlands. While on-site mitigation (e.g., setbacks, screening, treatment of stormwater) is often preferred, sometimes it is not possible or there might be stronger ecological benefits for mitigating off-site (e.g., contribution to a wetland mitigation bank). In these cases, compensatory mitigation options are available to pursue. In fact, the purchase of mitigation bank credits is one of the most frequently used options by developers in recent years.

Statutory and code language related to the wetland permit approval process can be found in the following areas:

- Section 404 of the USFW Clean Water Act
- Oregon Revised Statutes 196.600 through 196.910
- Local jurisdiction wetland codes

Tool challenges:

Time Consuming Process and Development Uncertainty

There are several challenges to the wetland permit approval process. First, the process creates a substantial degree of uncertainty for landowners and developers. Specifically, until a lengthy process is complete, there is no certainty about what portion of a property is actually developable, which results in sale price uncertainty for the owner and development risk for a potential buyer.

A developer must go through a process that is time consuming (in some instances well in excess of a year), for which there is no guaranteed outcome, and which can be tied up in appeals. Moreover, the process can be costly. On larger properties, the professional consultant fees can easily exceed $100,000, not including the financial burden of delayed approvals (i.e., the time value of money).

For example, if a property owner possesses 50 acres of industrially zoned land that he or she wants to sell, he or she would have difficulty selling the property unless he or she can find a

developer who is willing to take the risk of a lengthy, uncertain wetland review and permit process. The property owner could sell the land; however, the land sale price will reflect that uncertainty. Alternately, if the property owner is willing to grant an option-to-purchase with a relatively lengthy due diligence period, even wetland review and permit projects that take advantage of the alternatives noted in the Tool Description above (e.g., mitigation bank, in-lieu fee, permittee-responsible mitigation), applications can take many months for processing, with no guarantee of expedition.

Adding to this challenge, the wetland permit approval process is only granted for actual development. Even if the property owner were willing to incur the cost of permits prior to marketing his or her property, he or she would not have this option. In other words, he or she could not apply for an approval for a theoretical project as the Corps only reviews and permits specific development plans. The property owner may elect at his or her own expense (or possibly at the expense of the jurisdiction, if program funding exists) to fund a professional characterization of the affected wetland. This would represent a first step for the eventual permit. But, again, the property owner could not apply, or obtain a wetland permit approval until an actual development proposal was at play.

Resources Required for Regional Mitigation Efforts

In cases where on-site mitigation is not possible or preferable, mitigation banks are one option of providing developers with off-site mitigation opportunities. There are currently 21 banks in operation in Oregon and a few additional banks in the process of being established. Both public and private sponsors have created mitigation banks in Oregon. Establishing mitigation banks can be difficult due to the upfront financial resources, technical expertise, and the analysis required to find suitable sites.

For sites that are outside of the service area of available mitigation banks, it is possible to request an out-of-service area wetland exchange – essentially allowing the wetland feature on-site to be exchanged for improvements of a wetland out of the service area. However, this process is discretionary and reviewed on a case-by-case basis by DSL. A high degree of caution is used by DSL in assessing out-of-service area wetland exchange requests as the environmental differences of sites in different watersheds are usually not comparable.

From a more regional perspective, Regional General Permits (RGPs) allow activities to be approved for a specific geographic area provided that the sites in the permit have similar environmental characteristics. Major benefits of RGPs include: far more upfront certainty for landowners, expedited development process, regional approval of pre-certified activities, and consolidated environmental reviews. However, establishing a RGP is time consuming and requires approval from both state and federal levels. RGPs have also never been established specifically for filling wetlands. One precedent example - the Mid-Willamette Valley industrial lands RGP - attempted to fill in wetlands for a collection of industrial sites but ultimately failed to complete the application process because, according to the Corps, the purpose and need statement produced did not have enough specificity to meaningfully assess and evaluate alternative development scenarios.

Changes proposed:

To address the challenge of regulatory uncertainty for the region's many employment sites with wetland features, modifications to the wetland permit approval process should be considered. Some of these potential modifications overlap in their applicability with other modifications; some are "stand alone". All tools aim to reduce the amount of time and uncertainty involved with the wetland mitigation process.

Proactive Wetland Maintenance Education. Create a program to educate owners of sites with known or potential wetlands on the benefits of proper wetland maintenance (e.g., removal and control of invasive species; avoidance of pesticides or other threats to riparian or aquatic habitats; cleaning out of culverts or ditches; cleaning of piles; ponding on road ruts). The idea is that there are certain proactive actions a property owner can take to help protect a wetland asset and these actions also have the benefit of keeping wetlands from increasing in size unnecessarily. From the property owner's perspective, advanced planning and maintenance of wetland assets can help lower costs of future mitigation efforts.

Promote Early Delineation. Create incentives (and/or establish local jurisdiction funding, perhaps on a matching basis) for owners of wetland sites to undertake assessments of the sites, characterizing and evaluating the site's wetland features ahead of any development proposals. Such a characterization will serve as a "head start" to any future permit process, helping to save time for any future process. Without incentives, there is little motivation for a property owner to delineate wetlands until the time of a development proposal. The Port of Chehalis in Washington is proactively incentivizing property owners to do early delineations. DSL could expand on its current off-site wetland verification program by testing a pilot program in a specified region that is development challenged where property owners can make definitive determinations of wetlands on-site.

Establish New Mitigation Banks. Using the resources available at DSL, establishing a template or business model (especially for public entities) to create new mitigation banks that can help fill the gaps of geographic coverage. Public entities can also focus on areas where mitigation banks are needed but not provided by the private market. A recent example includes House Bill 2438 – a bill proposed in 2019 that would dedicate funding for DSL to research areas for new mitigation banks and offer resources for public jurisdictions to create and manage mitigation banks. The bill did not make it out of the House committee prior to adjournment of the 2019 legislative session.

Expand Out-of-Service Area Wetland Exchange. For sites with no serviceable mitigation banks, creating a more clear and objective process to allow out-of-service area wetland exchanges. Introducing formal criteria would help establish a process that reduces the current discretionary nature of approval. A regional analysis would have to be established to determine areas of like-kind mitigation and where out-of-service area wetland exchanges would be allowed. If efforts to expand both the type and location of wetland mitigation banks succeed, then the need for this flexibility will ideally diminish.

Expand Statewide Wetlands Inventory Tool. Create a robust map at the parcel level to enable landowners to get a sense of environmental assets on their property and the extent of mitigation needed prior to a full delineation report. DSL currently offers free offsite wetland determinations; however, the wait time is often long and intensive on staff resources. Creating a

web platform allows quick verification of general environmental assets on-site. Additional data such as DSL-Approved Local Wetlands Inventories (LWI) could be added for a more robust assessment.

Formalize Advance Aquatic Resource Plans. Created by the Regional Solutions Team and DSL by administrative rule (OAR 141-085-0768), Advance Aquatic Resource Plans are a flexible framework to voluntarily plan for the management of water resources on-site. While this tool does not replace the permitting process, it seeks to streamline the most difficult aspects of the permitting process ahead of time. To date, only two communities have used this tool for advanced planning as the amount of work and cost of analyses can be prohibitive. Getting the Corps to participate and validate advance aquatic resource plans as a formal procedure that expedites permit issuance is perhaps the most important change.

Establish a Regional General Permit (RGP) for Portland Metro Region. Similar to the RGP for Maintenance Activities along the South Coast of Oregon, a RGP should be established for the Portland metro region allowing pre-certified sites to pursue certain development activities. This would require a large effort to locate parcels with environmental constraints of similar nature and magnitude, and define development activities that would be applicable to all chosen sites. Another strategy would be to establish multiple RGPs within the region where there are clusters of sites within specific employment areas with similar environmental characteristics.

All of these potential solutions would help free up more development-ready employment property, by reducing or eliminating the uncertainty related to development of sites with known or potential wetlands. All of the solutions would require action by the Corps, DSL, DEQ, and local jurisdictions.

Implementation steps:

1. For **Proactive Wetland Maintenance Incentive** and **Early Delineation** tools, no changes to local, state or federal regulations are needed. However, a funding / reward structure is an initiative that the local jurisdiction can help set up to provide landowners with incentives for taking timely actions on wetland management. Approach Metro, and/or Business Oregon to explore funding options.

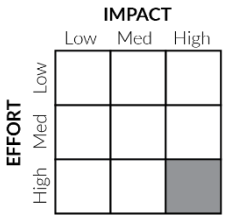
2. **Establishing New Mitigation Banks** would require approval from DSL and the Corps. HB 2438 (a proposed bill that was not approved in the 2019 Legislative session) included some resources that would have helped identify where new mitigation banks might be suitable. In addition, HB 2438 proposed resources for DSL to create a business model for local jurisdictions to replicate, allowing them to identify and set-up successful mitigation banks. HB 2438 was not approved in 2019, but there appears to be interest in bringing it back in a future legislative session. Future efforts include advocating for the approval of HB 2438, and allowing a portion of Metro's parks and nature bond money to be spent acquiring land with significant environmental features that can be set aside for future mitigation banks. Mitigation funding could then be used for wetland improvements and setting up new mitigation banks.

3. **Out-of-Service Area Wetland Exchange** is a tool that exists, but depending on the jurisdiction, may not be codified in local wetland codes. To anchor wetland exchanges as an option, rewriting the local wetland codes would be required. As an additional step,

introducing formal criteria to establish a regulatory process that relies less on discretion and case-by-case consideration would require DSL involvement.

4. **Expanding the Statewide Wetlands Inventory Tool** would require extra staff resources at DSL, especially for setting up educational resources for the public to learn how to use the tool. However, a better online tool could mitigate the number of off-site verifications of wetlands that DSL conducts. Off-site verification is a service that DSL currently offers for free, although it is often a long wait.
5. **Formalizing Advance Aquatic Resource Plans** would require significant conversations with the Corps and DSL to determine how best to assess projects that utilize advance aquatic resource plans, and how to codify the process as part of the regular permitting process. At the state level, advance aquatic resource plans can be written as an Agency Order, but the biggest hurdle is establishing how the Corps would process a project that utilizes advance aquatic resource plans.
6. **Establishing a Regional General Permit** would require participation from DSL, Corps, local jurisdictions, and property owners. RGPs are usually framed around actions or activities, not geographic areas, so a careful determination of development would be needed to determine if there are similar activities to be allowed for sites in a RGP boundary. A shared purpose and need statement is needed to describe the collection of sites being proposed for the RGP that share similar environmental characteristics. The statement needs to have enough specificity for the Corps to meaningfully assess and evaluate alternative development scenarios. Establishing a RGP requires both state and federal approval.

Tax Increment Finance (TIF) / Urban Renewal



Site readiness challenges addressed:

- Site assembly / aggregation
- Natural resource mitigation
- Infrastructure
- Brownfield remediation
- Redevelopment

Tool description:

Tax increment financing (TIF), codified in Oregon Revised Statutes 457.035 through 457.520, is among the most powerful locally controlled funding tools available to Oregon's cities and counties. Many jurisdictions throughout Oregon have adopted TIF district plans to help spur development on employment lands. TIF revenues are generated through an increase in total assessed value in an urban renewal area from the time the area is first established. The revenue generated by the growth in assessed value flows to an urban renewal agency (rather than to the other overlapping taxing districts, such a city, county, library) specifically to fund the redevelopment and other community projects that are identified in an adopted urban renewal plan.

In most cases, an urban renewal agency begins by issuing bonds to fund renewal projects. As property values grow, the increase in total property taxes (i.e., city, county, school portions) is used to pay off the bonds. When all bonds are paid off, the entire assessed valuation is returned to the general property tax rolls. TIF funds can be invested in the form of low interest loans and/or grants for a variety of capital investments. In employment areas, examples of uses could include brownfield remediation; predevelopment activities; site acquisition/ assembly; infrastructure, utility and other off-site improvements; or loans or grants to support development of commercial, retail, or industrial uses. TIF funds can only be spent within the adopted urban renewal boundary and must be spent on capital projects or studies needed to prepare for capital projects.

Tool challenges:

Three primary challenges to investing tax increment dollars in site readiness in Oregon's employment lands have been identified:

Early Stage Financing Limitation

Infrastructure and other investments to make sites ready for development are generally needed before property can be redeveloped. But TIF revenue takes time to accumulate in a new urban renewal area. To use TIF to fund these projects, agencies have to wait until the area has generated sufficient revenue to bond against. To fund those upfront costs, an urban renewal agency would need to either borrow money from its hosting city's general fund (which is usually quite limited) and repay with TIF or get a bank loan with terms may not be favorable. This can be difficult to justify and execute and can deter developers.

While this challenge is present for all TIF districts, it can be more acute in a few situations that are specifically relevant to employment lands and site readiness. TIF districts that encompass industrial areas typically have higher infrastructure costs compared to similar-scale but higher

value residential or commercial development. Single-site URAs are allowed but rarely created due to the lack of financing options for site readiness activities. Finally, new TIF districts must wait several years before being able to use their bonding capacity to pay for new infrastructure.

Funding Limitations

TIF districts are limited in the ways that they can mix public and private funds, and this limits their ability to enter into creative partnerships that advance the goals of the urban renewal area and the broader community. Because of the state's restrictions on the lending of credit, agencies can only lend startup money but cannot make money off of investments and then recirculate earnings to additional projects.[1] Further, as a public entity, an urban renewal agency generally cannot accept private or philanthropic donations for the purpose of advancing its mission.

Condemnation Limitation

Condemnation is a blunt but incredibly efficient and effective tool to enable site assembly. In Oregon, Measure 39, codified in ORS 35.015, effectively limits the government's authority to use eminent domain for private benefits or private party transfers, and also prohibits the government from using eminent domain property where a fee title transfer would be used. Urban renewal agencies are subject to the same limitations as other jurisdictions.

Changes proposed:

Early Stage Financing Limitation

Jurisdictions have several options to address this financing limitation, but each has challenges. The first option is to delay infrastructure investments until enough revenue has accumulated that it is possible to bond. This approach does not work for many TIF districts, since those areas encompass industrial parcels with relatively low assessed value and slow property tax revenue growth. For such areas, site readiness required for development may not occur without an upfront injection of capital from another source. Second, urban renewal agencies may borrow money from a city or county general fund and repay these funds with TIF funds. However, many cities or counties have very limited general fund resources and many competing needs for those resources and may be unable or unwilling to loan the capital. Third, an urban renewal agency may work with a city or county to use its general fund to back an urban renewal bond (using general fund dollars to repay debt if TIF is insufficient to make debt service in any given year). This is the most likely avenue for generating early stage financing but can still be challenging for communities that may be reluctant to risk their general fund for urban renewal investments.

A more effective long-term solution would be to tap an existing revolving loan fund or make available a region-wide (or statewide) pool of funds to help overcome these financing challenges for TIF districts that are focused on employment areas and site readiness. Revolving loan funds offer lower interest rates than private banks and can often offer longer loan terms and even interest-only periods. Loan funds can also be more patient and risk-tolerant compared to private banks as private banks are often not willing to lend money to new agencies with limited lending history and track records.

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[1] It is allowable to re-invest any interest payments on loans (referred to as 'program income' in new projects and with different and more flexible rules). Because loans are generally offered at very low interest rates, these funds are often limited.

There are existing programs, such as the Oregon Transportation Infrastructure Bank, that can provide loans for specific investments. The Infrastructure Bank is limited to investments in transportation infrastructure. Other programs have more specific investment criteria, including the Brownfields Revolving Loan/Grant Fund and the Oregon Business Development Fund. However, urban renewal practitioners have mentioned that these loans are generally geared toward larger-scale projects and that the process for obtaining these loans can require more time than some prospective business owners or investors are willing to tolerate in exchange for infrastructure investment on a target site. Other than these state programs, there appears to be no dedicated revolving loan fund for site-specific infrastructure on privately-owned employment land.

There are several organizations that could explore taking on such a program at the regional scale (e.g., Metro) or at the state (e.g., Business Oregon). A regional program could be more specifically targeted to the scale of loans appropriate for urban renewal agencies, including potential single-site URAs. However, the source of funding for capitalization of such a fund would be an issue as Metro funding sources are typically committed to other programs/ purposes. Business Oregon's current programs, even revolving loan programs with more specific funding criteria, have more applicants looking for funding on projects than they can accommodate. State recapitalization of these Business Oregon funds has been infrequent due to state funding demands. Requests for capitalization of the loan fund for the Regionally Significant Industrial Site Readiness program created in 2013 have not yet been fulfilled due to competing demands.

One of the most significant obstacles to fund startups is initial capitalization of the fund. Initial capital could be sourced through the issuance of a new bond, taxation, transfers from the general fund or special funds, or from large existing funding pools such as pension funds.

Any entity considering developing such a program should carefully research a set of eligibility criteria that provide some flexibility along with fulfilling local and regional economic development goals. The following programs can provide fodder for eligibility criteria creation: Oregon's Enterprise Zone[2], Brownfields Redevelopment Fund[3], and the Oregon Business Development Fund[4].

The consultant team's preliminary assessment is that the criteria for eligible projects should focus on the following:

- The urban renewal agency's ability to repay the loan, based on revenue forecasts.
- Creation of permanent jobs in industrial or commercial uses.
- Other community benefits, including transportation and environmental benefits of the infrastructure or other site readiness improvement.

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[2] Standard Enterprise Zone Program. Business Oregon. https://www.oregon4biz.com/Oregon-Business/Tax-Incentives/Enterprise-Zones/Eligibility/

[3] Financing Brownfields Development in Oregon Fact Sheet. Business Oregon. https://www.orinfrastructure.org/assets/docs/brownfields.pdf

[4] Oregon Business Development Fund. Business Oregon. https://www.oregon4biz.com/How-We-Can-Help/Finance-Programs/OBDF/

Public-Private Funding Limitation:

ORS 457 and state lending of credit prohibitions limit the ability of urban renewal agencies to mix public and private funds. There are several reasons why urban renewal agencies may not want to directly serve in the role of mixing public and private funds, and instead partner with an outside entity. These include the capacity of the existing board, the existing portfolio of potential TIF projects, and the geographic specificity of the TIF district which may limit potential creative partnerships. A more targeted option would be to combine the investment powers of a TIF district with one of the best practices explored in Task 1 of the Employment Land Site Readiness Toolkit project: an enhanced development authority or a non-profit economic development corporation (or EDC).

A regional entity could support and provide technical assistance to local jurisdictions as they establish non-profit organizations to serve as community, economic, or industrial development entities to carry out a specific mission. A non-profit EDC offers a project-specific mission and focus; dedicated long-term management; greater flexibility in project implementation; strategic partnering opportunities for greater efficiency; and access to short-and long-term funding not available to public agencies.

Potential projects that an EDC could lead, in partnership with the urban renewal agency, include:

- **Large-scale Redevelopment Efforts,** especially those that could attract private funds. The EDC could receive those funds for land acquisition, site readiness activities, and redevelopment. The urban renewal agency could provide funding to support all of these activities without being the lead development entity.
- **Programming and Support.** An employment-focused EDC could serve a community mission that provides programming and ongoing business support to local businesses.

Examples of municipalities using non-profit development corporations include large cities such as New York (New York City Economic Development Corporation) and Philadelphia (Philadelphia Industrial Development Corp.), as well as smaller communities such as the Rockwood Community Development Corp. in Gresham, and the Round-up City Development Corporation in Pendleton.

Condemnation Limitation:

Changing Oregon's condemnation laws would require a change to the statute in ORS 35.015. This statute limits the ability to "condemn private real property used as a residence, business establishment, farm or forest operation if at the time of the condemnation the public body intends to convey fee title to all or a portion of the real property, or a lesser interest than fee title, to another private party." Changes to the statute would require substantial effort and political will and may be more successful when the economy is less robust and policymakers can frame these changes as an important tool for promoting major new business investment. Adding specific parameters to any proposed change may limit the focus to TIF districts working on employment lands, avoid residential displacement, and institute relocation cost provisions in the case of businesses that have to be closed due to the condemnation. Eligible lands should be limited to lands with industrial/employment zoning/Comprehensive Plan designation.

Additionally, as they exist today in their current form, the statute may allow some flexibility regarding condemnation action. While there may be risks requiring legal evaluation, the statute does not appear to prohibit condemnation for private use in the following specific circumstances:

- The statute explicitly disallows condemnation of real property used as a "residence, business establishment, or farm or forest operation" (ORS 35.015(1)). The statute clearly intends to protect existing residents and businesses. The statute appears not to preclude condemnation of private property that is not in productive business or residential use (e.g., vacant land, or land with vacant buildings).
- The statute is clear that it does not apply to brownfields ("property that constitutes a danger to the health or safety of the community by reason of contamination, dilapidated structures") or to properties with insufficient water or sanitary facilities (ORS 35.015 (2)(a)).
- The statute indicates that a public entity cannot "intend" to transfer the property to private use at the time that it is condemned (ORS 35.015(1)) and that a court will determine that intent if it is called into question (ORS 35.015(6)). It appears that a condemned property could be transferred to a private party if there is evidence that the entity had some intent other than transfer to a private party at the time that it was condemned.

Implementation Steps:

Revolving Loan Fund[5]

The following steps would advance a new revolving loan fund that could support TIF districts:

1. Survey urban renewal practitioners about loan fund needs and vet potential investment criteria.
2. Identify potential state/regional agencies to lead this effort. This could include discussions with existing organizations providing similar services to determine where an urban renewal revolving loan fund could fit.
3. Leverage the expertise of existing program administrators to determine a clear purpose and goals for the proposed revolving loan fund and develop loan program criteria.
4. Advocate and secure support for creation of a state or regional revolving loan fund and resources to capitalize the fund.
5. Develop administrative rules and program materials for the fund.

Economic Development Corporation

An Economic Development Corporation (EDC) is a non-profit charitable organization that is authorized by Oregon Revised Statutes Chapter 65. Like other non-profits, these organizations are tax-exempt and must follow Internal Revenue Service (IRS) and state requirements. There are no statutory changes needed at the state level. Instead, a jurisdiction with an urban renewal agency would need to evaluate the potential role of an EDC in advancing development on employment lands. That process will look different depending on the jurisdiction. The angles a jurisdiction will want to explore programmatically include:

[5] Revolving Loan Funds – Basics and Best Practices. 2009. National Renewable Energy Laboratory. https://www.energy.gov/sites/prod/files/2014/05/f15/tap_webinar_20090826_booth.pdf

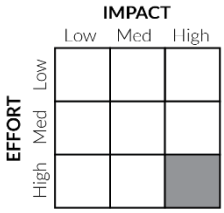
- **Connection and interaction with the EDC.** While most EDCs are private non-profit organizations, a city or urban renewal agency can maintain some control over the activities of the organization by serving on the board of directors.
- **Legal requirements for program integration.** To begin implementation, TIF districts or cities interested in forming an EDC for employment lands would secure legal and other best practice guidance, describing and memorializing the potential interaction between urban renewal programs and an EDC.
- **Potential projects and programs for the EDC (distinct from urban renewal projects).** Broadly speaking, a general process for establishing a non-profit development entity would apply whether it is called a "community development corporation," an "economic development corporation," an "industrial development corporation," or is given some other title. Initially, the city (or possibly the urban renewal agency) would sponsor development of a strategic plan for the corporation, which would include, among other things, a mission statement, a charter, a specific scope of activities, a preliminary budget, and an operating plan. After obtaining public support, the corporation would establish itself as an Oregon public benefit corporation, recruit board members, develop a detailed work plan and budget, and file an IRS application for tax exemption as a 501(c)(3) corporation. Once the corporation is operational, it will negotiate with the city or urban renewal agency regarding scope of activities and responsibilities, which could include contracting for services, transfer of properties, and other activities. The corporation would then begin the process of soliciting funding and executing its work plan. The city or urban renewal agency would have oversight of the corporation's activities, both through control of the non-profit's board (as discussed below) and through contractual reporting requirements.

Condemnation Limitation:
Additional legal analysis would be needed before using condemnation for private purposes. Statutory change is the safest path forward to increasing the powers of urban renewal agencies to condemn properties for site aggregation, with "sideboards" limiting the circumstances under which condemnation might be allowed (i.e., prohibition on condemnation for private re-use that would entail displacement of residential).

Considerations:

- **Prevailing wage**. This could present a problem for projects that receive substantial private funding. Communities will need to complete additional research on the requirements for prevailing wage in the construction of buildings if the site has publicly funded infrastructure projects.
- **Coordination with Regional Employment Land Investment Fund**. As an alternative, the Regional Employment Land Investment Fund (RELIF) identified in Task 2 of the Employment Land Readiness project could also provide a revolving loan program. Bare brownfield real estate could get a return in the future once development takes place on that land, even if return is less than ideal.
- **Be specific**. When proposing changes, it will be important to carve out separate subsection of condemnation purposes that this approach can apply to.
- **Competition with private banks.** Private sector banks may feel threatened by government-run revolving loan funds, fearing competition and crowding out.

Local Improvement Districts (LIDs)



Site readiness challenges addressed:

- Infrastructure
- Redevelopment

Tool description:

Local Improvement Districts (LIDs) are a means of financing local capital improvements through the formation of special assessment districts that include the benefiting properties. The governing body of local governments (i.e., cities and counties) in Oregon have the statutory authority under ORS 223.309 to establish LIDs. LID assessments are a lien on properties, which may be paid in one lump sum (upfront) or payable in annual installments for a minimum of 10 years and a maximum of 30 years.

An advantage of LIDs from the public perspective is the ability to attain a consistent level of revenue generation as soon as capital investments are made. Financial intermediaries such as banks view LIDs as a more reliable funding source than others (e.g., SDCs) and are more apt to provide loans or bonds based on future LID revenue streams.

Tool challenges:

While LIDs can provide an effective means to finance improvements, they are administratively burdensome and potentially contentious. As such, their application is relatively limited in Oregon. There are several issues and challenges related to forming LIDs which appear to limit their use. Key issues include the following:

- **State Law Limits Entities Eligible to Form LIDs.** Oregon state law only allows local governments to form LIDs. This means that Urban Renewal Agencies, Utility Districts or other special districts cannot use this infrastructure funding tool.
- **Lack of Upfront Capital.** Similar to the upfront capital challenges faced by TIF districts discussed above, LIDs do not themselves provide the upfront capital needed to construct infrastructure but are well-suited to pay back funds once borrowed from elsewhere.
- **Risk of Foreclosure.** Several local actions related to the formation of LIDs can help mitigate the risk that LIDs result in property foreclosure.

Changes proposed:

The following changes are proposed to help local governments better address these issues:

Remove barriers to more LID formation

In Oregon, a LID may only be formed by a local government. ORS 223.289 explicitly uses the term “local government” in describing the required procedures for a LID and does not clearly state that a quasi-governmental entity, such as a special district or public utility, may form a LID. While municipal governments (cities, counties) are allowed to form LIDs by local ordinance in Oregon; in states such as Washington, water and sewer districts, ports, and fire protection districts are allowed to utilize the basic LID formation process but must also petition the local government to create/adopt the LID.

In other states, including Washington, a variation of the LID is the Utility Local Improvement District. The difference between Utility LIDs and LIDs is that utility revenues (e.g., water and sewer rate revenues) pledged to the repayment of the ULID debt, in addition to the assessments on the benefiting properties. Washington State statute provides that a LID can be converted to a ULID after formation, but the reverse is not allowed.

Utilize Revolving Loan Fund

LIDs provide a debt repayment source for capital improvements. However, advance financing is required to fully fund the capital project. This means that LIDs face similar early stage funding challenges as TIF districts. A regional revolving loan fund could make the use of LIDs to fund the repayment of these loans far more effective as a tool for delivering infrastructure.

Mitigate the risks of foreclosure

LIDs are only financing tools, so there is some level of risk to the parties (public or private) that put up advance funding to fully fund local improvements. Local governments can take the following steps through local administrative changes to achieve these goals while mitigating the risk of foreclosure:

- **Require an escrow fund**. If the local government finances a LID with bonds or debt, it should consider techniques to mitigate risks associated with potential default by property owners within the district. For LIDs that are petitioned by "developers" (or quasi-governmental entities), a local government could require an escrow fund (e.g., 5-10% of total project costs) to be established by LID petitioners to be accessed in case of default. The local government should be sure to discuss financing covenants with their bonding council.
- **Allocate funding commitments in proportion with benefits**. Local governments should establish general parameters that guide LID public investment/funding commitments in proportion to the level of public benefit expected by the new public facility improvements. For example, a new collector street that costs $1.5 million and provides citywide benefits could be funded through a mix of sources, including SDCs, LIDs and TIF funds.
- **Maintain an appropriate assessment ratio**. Individual LID assessments should be kept well below the assessed property value of each lot after construction of the public facility is completed. Keeping the ratio of assessments to valuation levels at less than 1:5 is recommended. For example, a lot with a $100,000 LID assessment should have a property value increase of at least $500,000 after the improvement is constructed.

Implementation steps:

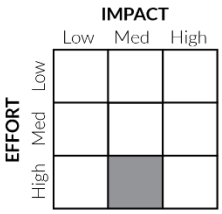
The following steps can be taken to implement the changes proposed above and to expand the use of LIDs in the region and across the state:

1. Amend ORS 223.389 to enable quasi-governments to form LIDs, and to allow the formation of Utility LIDs. Potential partners that could lead this initiative would include Metro, Port of Portland, City of Portland, League of Oregon Cities, and utility organizations.
    - Clarify the procedural requirements for public-initiated vs. developer-initiated LIDs in a manner to encourage developers and quasi-governmental agencies,

such as Port Authorities and Urban Renewal Agencies to prepare LIDs and to petition local governments to adopt LIDs. A statutory amendment would be required to allow other public entities such as Port Authorities and Urban Renewal Agencies to establish LIDs without concurrent approval by the governing body of local governments

2. Establish a regional revolving loan fund to be used for local infrastructure construction that generates desired economic development. (See a more detailed set of implementation steps in the TIF/URA section above.)

Oregon Cleanup Funds



Site readiness challenges addressed:

- Brownfield remediation

Tool description:

There are several state and regional cleanup funds that have benefit to brownfield remediation on employment lands. Both the Oregon Brownfields Redevelopment Fund and the Metro Solid Waste Fund are described below.

Oregon Brownfields Redevelopment Fund

The Oregon Brownfields Redevelopment Fund is authorized under ORS 285A.185 through 285A.192 and is managed by Business Oregon. It is used to fund assessment and cleanup of brownfield sites. Public entities (i.e., cities, counties, ports, tribes) have access to both grants and loans through this program, while private parties (i.e., individuals, businesses) have access only to loan funds. This program has funded hundreds of cleanups across Oregon since its inception in 1982.

The Oregon Brownfields Redevelopment Fund is funded by proceeds from the sale of state revenue bonds. It is periodically recapitalized by the Oregon legislature using lottery fund dollars. The last recapitalization of $5 million was in 2017.

Metro Solid Waste Fund

The Metro Solid Waste Fund is regulated under rules pertaining to solid waste management (including taxes and fees) contained within Metro Code, Chapter 5. For the fiscal year of 2019, the excise tax rate was $12.41 per ton solid waste. This tax is expected to generate $18 million in discretionary tax revenue in 2019. These tax revenues are currently used to fund various Metro solid waste programs, including the Metro Solid Waste Fund.

Tool challenges:

Oregon Brownfields Redevelopment Fund

The economic development objective of the Oregon Brownfields Redevelopment Fund is most consistent with employment land readiness. When considering employment land readiness, the most significant challenge presented by this funding source is the availability of state loan/grant funds for brownfield remediation. Recapitalization of this revolving loan fund has been inconsistent which has limited the ability of the state to provide financing for such cleanups. Another limitation is that Technical Assistance grants are limited to $60,000 and Integrated Planning Grants are limited to $25,000; these technical assistance grants are only available to public entities.

Metro Solid Waste Fund

The challenges associated with the solid waste program fees is that they are not dedicated to brownfield remediation but used for more general purposes. Given the number of brownfield sites in the Portland UGB identified in Metro's 2012 Brownfield Scoping Project, there is clearly a need for additional resources to support brownfield cleanup and there is a nexus between solid waste and brownfield remediation.

Changes proposed:

Based on the financial sustainability, funding sources, and use of these funds, the following changes are proposed:

Oregon Brownfields Redevelopment Fund. Potential changes that could be made to support site readiness include:

- **Expand Entities Eligible for Technical Assistance and Integrated Planning Grants.** Expanding the types of entities that can apply for the grant funding offered through the fund. Non-profits would be logical entities to have access to these funds. Perhaps even private parties that are not liable under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the release being addressed under certain circumstances. Requiring matching funds from private parties would ensure private investment is also being made.
- **Larger and More Frequent Recapitalization.** Making the potential changes listed above would increase demand for the account. As a result, the bond issuance would need to be made for a larger amount, and larger and more frequent legislative recapitalization would need to occur. Recapitalizing the fund with $10 million in state funding is suggested. The last recapitalization of the fund was in 2017 and due to the nature of revolving loan funds, the exact loan balance is difficult to determine. However, there is approximately $4 million in the fund balance.

Metro Solid Waste Fund

Dedicate a portion of the Metro Solid Waste Fund to support brownfield remediation within the Portland Metro UGB. This will require changes to Metro code and approval from Metro Council.

Implementation steps:

The general process for making the proposed changes described above would include the following steps.

Oregon Brownfields Redevelopment Program

1. Discuss proposed conceptual changes with the Oregon Brownfields Coalition and contact Business Oregon and DEQ to discuss the desired statutory changes to the Brownfields Redevelopment Program.
2. If there is consensus, engage other stakeholders and develop a legislative proposal.
3. Seek legislative sponsors and support and secure passage of the legislation.

Metro Solid Waste Fund

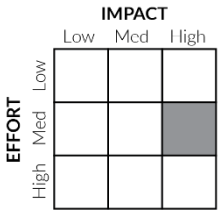
1. Discuss proposed conceptual changes with Metro leadership (Metro Council President and Chief Operating Officer) to discuss the desired code amendments to allow dedication of a portion of the Metro Solid Waste Fund to employment land brownfield remediation.
2. Work with Metro staff to pursue amendments to Metro Code, Chapter 5. Code provisions are amended by ordinance, requiring a recommendation by the Chief Operating Officer and approval by Metro Council.

Other Considerations:

Oregon Brownfields Redevelopment Fund – Increasing grant limits and expanding access to the program would increase recapitalization demands in a resource constrained state. The good news is that there is a strong, active constituency for this program in the Brownfield Coalition.

Metro Solid Waste Fund – This program has been in existence since 1982 and has a number of programs and constituencies with vested interests in use of revenue from this fund. Allocating a portion of this fund for other purposes is likely to be politically challenging, but would yield significant benefit to moving employment sites to development-ready status.

System Development Charge (SDC) Financing



Site readiness challenges addressed:

- Brownfield remediation
- Redevelopment
- Equity development

Tool description:

System Development Charges (SDCs) are the primary funding source for local public infrastructure. Oregon Revised Statutes 223.208 and 223.297 through 223.314 provides authority for local jurisdictions to levy fees on new development to pay for infrastructure projects that expand capacity and are identified within local Capital Improvement Plans (CIPs). SDC fees are typically paid when a development permit is issued.

Tool challenges:

SDCs are an important source of revenue for cities to cover the cost of public infrastructure. However, there is also a very high upfront cost in the development process. In Portland and Bend, for instance, SDCs can be in the hundreds of thousands of dollars for even a medium-sized commercial, multi-family or mixed-use project. In real estate development, large costs near the beginning of a project (long before revenue is being generated) can be a major barrier, particularly for small and medium-sized builders.

Recognizing this barrier, several cities around the state have established financing programs for SDCs. These programs usually allow for payment of SDCs over a 5, 10, or 20-year period with an interest rate applied (interest rates vary from jurisdiction to jurisdiction and are based on the pay off period). The loan is guaranteed by applying a lien on the property and the lien is released upon full payment.

First Position Requirements

Typically, SDC loan programs require their lien to be “first priority,” which means the loan must be in first position and must be repaid before any other debt if the project defaults. This is a problem for most development projects with conventional debt financing. A conventional commercial loan is the most common way to finance development projects and is often the largest single source of funds used to fund development projects. Commercial loans also require a first position. Therefore, if a developer is using a commercial loan, they will not be able to utilize the SDC financing program. This requirement renders SDC financing programs of limited use in most circumstances.

Allowing SDC loans to be subordinated (or in second position) to primary debt would greatly expand the usefulness of SDC financing programs across the state. Discussions with finance and legal staff at the cities of Portland, Bend, Gresham and Milwaukie reinforced that the legality of subordination is not clearly understood. Some confusion surrounds the question of whether these liens must be first position and prioritized above all other liens or if the liens can be second position or subordinated to primary debt.

By way of example of the potential impact of subordinated SDC financing, consider a relatively small, residential-over-retail mixed-use building with a construction cost of $18 million. SDC fees

for a project like this in a market like Portland or Bend can amount to roughly 6% of total costs or $1.1 million. Financing the SDC fees at costs below conventional borrowing rates reduces the debt service – typically the largest single annual expense – on a project like this upwards of $100,000 per year, which is about 10% in this example. Newly constructed mixed-use development projects typically have relatively low annual cash flow, especially in early years, so a swing of $100,000 in costs per year can be the difference between a project losing money or generating enough money to be merited.

Unclear ORS Language

Two sections within Chapter 223 of the Oregon Revised Statues (ORS) are unclear. Chapter 223 contains details related to several infrastructure programs and financing provisions. Within the subchapter entitled Financing Local Improvements (Bancroft Bonding Act), the section called 223.230 Lien Docket states clearly that "…the lien shall have priority over all other liens and encumbrances whatsoever." However, a preceding section offers an important exception, which may allow SDC liens to be subordinated.

Section 223.208 states: "Notwithstanding ORS 223.230 (Lien docket), the financing of system development or connection charges under this section may, at the option of the governing body, be a second lien on real property, which lien shall be inferior only to the mortgage or other security interest held by the lender of the owner's purchase money."[6]

Changes proposed:

For the purposes of this analysis, the assumption is that second position SDC liens are legal. However, ORS language should be amended to offer clear and unambiguous direction to local governments regarding the legality of second position SDC liens. With this clarity, and if cities adopt program changes to enable second position liens, the SDC financing programs will have a much broader use potential. The program would become useable by the vast majority of developers who utilize private debt, which always requires a first position.

Implementation steps:

Currently, no language regarding financing and lien positions exists within the System Development Charges subchapter of ORS 223. Language that references section 223.208 above should be inserted into the SDC subchapter to ensure any local legal and finance staff can clearly determine that second position liens are allowed for SDC financing specifically.

Other Considerations:

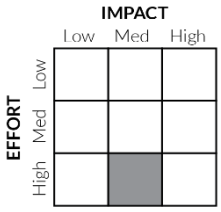
Cities considering establishing an SDC financing program or considering ways to make their existing programs more useful, should look closely at the loan terms.

- **Long Loan Amortization Period.** Longer amortization periods on loans results in lower monthly or annual payments, which can make them more appealing. One thought is to offer a 20-year loan term to keep payments low, but then require a balloon payoff at year 10 to enable property owners to pay off a SDC loan at the time of a 10-year refinance, which is a common timeframe for a refinance.

[6] ORS 223.208 System development and connection charges of local government subject to Bancroft Bonding Act

- **Interest Rate Lower than Private Loans.** Public borrowing rates are lower than private banks so it should be possible for cities to offer more competitive interest rates for SDC financing. Many programs across the state have relatively high interest rates, such as 6-7%, when commercial loans are currently available for 6-7%, which means the SDC loan terms are not competitive. One way to ensure a competitive rate would be to set a rate based on the city's borrowing rate plus a small additional percentage or fraction of a percentage. For instance, if public borrowing rates are 4.25%, then a city could set a policy to offer borrowing rate plus one percent resulting in a rate of 5.25%, which is below commercial lending rates.
- **SDC Deferral.** SDC fees are normally assessed at the time of permit issuance. However, a handful of communities have implemented a deferral program that allow SDC fees to be paid at the time of occupancy instead. This delays the payment of SDCs 12-18 months, depending on the construction schedule. This construction period is a particularly risky time of a development project when a lot of money is being spent but no revenue is coming in. Deferral allowances can be allowed with SDC financing programs to maximum impact. If a city is unable or unwilling to consider subordinated financing, implementing a deferral program can be the next most impactful option.

Conversion of Gravel Pits



Site readiness challenges addressed:

- Gravel Pit Conversion

Tool description:

Under current Oregon laws (Oregon Revised Statutes 517.702 to 517.992), an Operating Permit is required for aggregate extraction activities that exceed 1 acre of disturbance in any 12-month period and/or 5,000 cubic yards of excavation in any 12-month period. When total disturbance exceeds 5 acres, an Operating Permit is required unless the activity is exempt. Annual Operating Permit renewal and reporting are required until mining and reclamation are complete.

A Reclamation Plan is a required element of an Operating Permit application and must include, among other things, the following:

- Oregon Administrative Rules (OAR) 632-030-0025 (1)(e) - A description of the present land use and planned beneficial use of the site following mining. The applicant must demonstrate that the planned beneficial use is compatible with the affected local government's acknowledged comprehensive plan and land use regulations.
- OAR 632-030-0025 (1)(i) - Provisions for the backfilling, recontouring, decompaction, topsoil replacement, seedbed preparation, mulching, fertilizing, selection of plant species, seeding or planting rates, weed control, and schedules.

Oregon Administrative Rules also require that reclamation be completed in a “timely manner” (OAR 632-030-0027 [7]), but “timely manner” is not well-defined in the rule. For example, a mine is allowed up to five years following the end of production to initiate reclamation.

Despite these rules, often Reclamation Plans and actual reclamation fall short of resulting in a post aggregate mining site that is shovel-ready for redevelopment. The purpose of this tool is to describe actions that can be taken to produce shovel-ready post aggregate mining sites.

Tool challenges:

There are five main challenges regarding reclamation activities: 1) long operational life of pits, 2) high costs associated with reclamation, 3) outdated reclamation planned land use strategies, 4) limited ongoing local jurisdiction engagement, and 5) limited regulatory consequences if implementation of Reclamation Plans does not occur.

Outdated Plans Due to Long Operational Life of Pits

A related challenge is that for some aggregate mines, the planned land use in the Reclamation Plan may become outdated due to the long operational life of some mines. As currently written, Oregon statutes and rules do allow for local government jurisdictions to be involved in specifying a planned post-mining land use within a Reclamation Plan submitted as part of an Operational Permit application. Medium to large aggregate mining operations may have an operational life of many decades. For example, operations began at the Knife River Vance Pit aggregate mine in 1974 and mine operations remain active today, 45 years later. As a result of these long operational periods, local jurisdiction land use plans for the mine lands may change during the mine’s operational life. With only a few exceptions stated in ORS 517.831 (2), none of which relate to planned land use, the Department of Geology and Mineral Industries (DOGAMI) – the

state agency that manages active mining operations - may not modify a Reclamation Plan without the operator's consent. Any change to the Reclamation Plan that increases reclamation costs is unlikely to be approved by the operator. This puts an undue burden on a local jurisdiction to stipulate a land use for a specific property that may not be implemented for 50 years or more.

Fill Materials Dictated by Reclamation Plan

Related to the issue above, the specific fill materials are also dictated by the Reclamation Plan in anticipation of a future land use that may no longer be relevant at the time of reclamation. Rules for fill placement and quality state that:

- OAR 632-030-0025 (bb)(B) - Fill material at a reclamation site must be used in accordance with a written fill plan approved by DEQ or specific provisions in the approved reclamation plan. The fill plan or reclamation plan must show the locations for stockpiling and permanent placement of the fill material and provide for monitoring of the quality and quantity of the fill material. The quality, quantity and location of fill material used on the site must be consistent with local land use plans and regulations. Documentation showing compliance with the approved plan and this subsection must be provided to the DEQ upon request.

The type of fill used in reclamation can influence the range of uses that can occur on the surface. This can lead to a situation where current city plans for an area could be rendered far more costly or impossible by a strict adherence to a decades-old Reclamation Plan.

Lack of State Enforcement and Local Influence

Enforcement is critical for ensuring reclamation activities are successfully executed. While DOGAMI includes enforceable timetables in their permits, there are examples of projects like the Ross Island Sand and Gravel operation where terms are vague and reclamation activities go unenforced. This lack of accountability poses a significant threat to a site's ability to be used for other activities post-mining. Active engagement between the local jurisdiction and DOGAMI is critical to ensure both timely and suitable reclamation activities are performed. If expectations are not being met, then DOGAMI can use its enforcement powers to motivate operator to take corrective actions.

Changes proposed:

Allowing Reclamation Plans to Change

The statute (ORS 517.831 ([2]) that indicates the conditions under with DOGAMI can modify a Reclamation Plan without consent of the operator reads as follows.

"(2) The department may modify an operating permit or reclamation plan without the consent of the operator if, because of changed conditions at the permitted site or because of information otherwise not available to the department at the time of permit issuance or reclamation plan establishment, the department finds, by substantial evidence, that a modification is justified due to the potential for:

(a) Substantial harm to off-site property;

(b) Harm to threatened or endangered species; or

(c) Channel changes or unstable pit walls."

A potential solution to the challenge of changing the land use specified in a decades-old Reclamation Plan for an active mine site, with or without the consent of the mine operator, is to change this statute by adding a subsection (2)(d) as outlined below:

"(2)(d) Local government jurisdiction(s) and/or its residents and businesses are harmed by an outdated Reclamation Plan planned land use, but only in cases where the operational life of a mine exceeds 20 years."

For example, permit 26-0003 for the Knife River Vance Pit mine located in Gresham, Oregon indicates a planned land use of industrial park. While this is generally consistent with current zoning, Multnomah County is currently completing a master plan for their property, which constitutes a large portion of the same employment area where Knife River is located. The County's planning effort may result in a request for zoning changes that influence the City's future planning of areas beyond the boundaries of the County's property. Plans change regularly, and employment areas change much faster than residential areas.

With a statutory acknowledgement that reclamation plans are allowed to change, jurisdictions have greater leverage in determining future site outcomes that are more compatible with current and future planning efforts. This chance allows for reclamation budgets and activities to be amended to better meet the goals of a community vision and/or future use; so long as it maintains the environmental, health and safety intents of reclamation. This would help in (1) coordinating reclamation plans with a community's future vision for new mining permits; (2) enabling an understanding of what the reclamation plan accomplishes so amended or additional site preparation can be accounted for by the site owner or buyer/developer; and (3) allowing the reclamation financial assurance funds and activities to be reprogrammed to better support the intended future use and maintain health and safety standards of the reclamation.

Stronger Enforcement of Reclamation Plans

Local jurisdictions currently have limited involvement in enforcing reclamation plans. In order to create a stronger process, a formal line of communication could be created between local jurisdictions and DOGAMI. The Regional Solutions Team could help facilitate communication by creating a protocol for local jurisdictions to elevate compliance issues to DOGAMI. Having a regular stakeholder group represented by local jurisdictions, DOGAMI, and the Regional Solutions Team can help create an early warning system of any mining operations that are falling into non-compliance of reclamation plans.

Implementation steps:

The general process for making changes to ORS 517.831 (2) as proposed above would include the following steps:

1. Contact DOGAMI and discuss with them why these statutory changes are needed.
2. If there is consensus among DOGAMI staff that such a law change is warranted, assemble stakeholders to evaluate the proposal and seek input from local governments.
3. Develop draft legislation for the proposed statutory changes.
4. Seek legislative sponsors and support and secure passage of the legislation.

In terms of granting local jurisdictions increased control over enforcement of reclamation plans, the following next steps can be pursued:

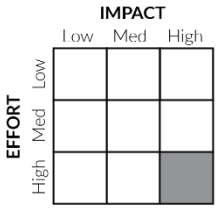
1. Work with DOGAMI to provide training for local jurisdictions on how the reclamation process works.
2. Create a stakeholder group with the local jurisdiction, DOGAMI and operator facilitated by the Regional Solutions Team. Jurisdictions that are not part of the stakeholder group could be represented by the Regional Solutions Team.
3. Convene the stakeholder group regularly to report on status of reclamation plans and flags potential non-compliance situations.
4. Escalate any situations where reclamation plans are not being enforced to DOGAMI through the Regional Solutions Team.

Other Considerations:

Aggregate producers are in the business of extracting, processing and selling aggregate. Mine reclamation is viewed by aggregate producers as a regulatory requirement that must be fulfilled, but that is not a part of their core business. As a result, reclamation does not get the attention it deserves, and as a result, takes longer than it needs to, and may not be done well as mine operators seek to implement reclamation at the lowest possible cost.

Putting the reclamation process in the hands of an entity that will maximize public and private benefits is a worthwhile consideration. This could be a public agency, such as a Land Bank Authority, which is more likely to have the patience to see the reclamation process through, or a private party interested in post-reclamation redevelopment of the site as a private venture. In addition, public dollars used for site-readiness could help spell out requirements expected from the developer in addition to the reclamation plan.

Regionally Significant Industrial Site Readiness (RSIS) Program



Site readiness challenges addressed:

A broad range of site readiness challenges are eligible for reimbursement to local sponsors of designated industrial sites under the RSIS program managed by Business Oregon.

- Site assembly / aggregation
- Natural resource mitigation
- Infrastructure
- Brownfield remediation
- Gravel pit conversion
- Entitlements

In addition to the list above, other eligible site readiness challenges include: acquisition; site grading; planning, engineering and administrative costs associated with applying for necessary permits; and up to 20% of interest-carrying costs for amounts borrowed to develop a regionally significant industrial site.

Tool description:

The RSIS Program (Oregon Revised Statutes 285B.625 to 285B.632 and Oregon Administrative Rules 123-097-0100 to 123-097-3000) provides a local sponsor (e.g., city, county, port) tax reimbursement[7] for publicly funded site readiness investments for designated industrial sites once a traded-sector business begins operating on-site and creates more than 50 jobs earning 150% of the state or county average wage (whichever is lower). The local sponsor is eligible for reimbursement of all eligible site readiness costs approved. Reimbursement of these funds is limited annually to 50% of state income tax revenues from the jobs created on-site and no more than $10 million a year in tax reimbursement can be allocated by the department under the program each year.

There is no out of pocket expense on the part of the state by the RSIS Program. Any shared revenues come from personal income taxes that would not have been received “but for” the site readiness investments made under this program. The local project sponsor assumes all upfront costs and bears all the risk if the site fails to attract a traded-sector business or underperforms. If the wage threshold is not met or there is less income tax derived from the site, there is no reimbursement to the local sponsor. If there is less income tax derived from the site, the annual reimbursement to the sponsor is less. If no development occurs, there is no reimbursement of funds. Following tax reimbursement of local site readiness costs, the state retains all future state income taxes associated with the site.

[7] Loan forgiveness up to 50% is also provided for in the statute for this program. However, the legislature has not approved any loan funding to capitalize this portion of the program since the statute was enacted in 2013.

Tool challenges:

As currently written, the RSIS Program does not allow for site readiness investments incurred by a private entity (developer or landowners) to qualify for the tax reimbursement. While the RSIS Program has attracted a number of applicants across the state and provides a tool to support site readiness[8], the program's exclusion of private developer/landowner site readiness expenses has the following challenges:

- The RSIS Program is one of the few tools that is available to assist with site preparation critical to ensuring our region and state have a competitive supply of industrial lands for traded-sector development. The interpretation that private landowners/developers that invest in eligible site investment activities are not eligible for the income tax reimbursement limits the effectiveness of this tool and could eliminate the ability for some public entities to use the RSIS Program.
- For communities with limited financial resources, public/private partnerships are necessary to prepare constrained industrial sites for development in order to advance economic development goals.
- It is unlikely that a public sponsor would be able to secure outside financing for site readiness activities (that can be upwards of tens of millions of dollars) with no guarantee of future users on a site to generate the income tax revenue to pay back the debt. A commitment to make the RSIS site available to eligible employers within a development agreement may be sufficient for Business Oregon's purposes [OAR 123-097-1000 (2)(g)(B)] but is not enough of a guarantee to allow a public agency to secure outside funding.

Changes proposed:

To enhance access to and the benefits from the RSIS Program, Business Oregon and/or economic development practitioners should work with stakeholders and legislative partners on a bill to revise current statute to allow private landowner/developer reimbursement for up to 50% of site readiness costs, excluding acquisition and assembly. Many prime industrial sites in the state are privately held. In some communities, all industrial sites are privately held. The original legislation envisioned that public sponsors could partner with private landowners in a development agreement to pursue site readiness on private industrial sites; however, the legislative history on this was unclear. Making private investment in site readiness activities eligible to use the RSIS Program will give private investors an incentive to market a property to high employment/high wage generating users because of their financial stake in the project. It will also encourage a faster timeline to prepare a site for development through site readiness

[8] As of October 2019, there are four sites that have been designated, four applications that are being processed, and 7-9 local governments that are preparing applications for the tax reimbursement portion of the Industrial Site Readiness Program. This list of approved and pending applicants includes six rural areas and two urban areas: Port of Portland, Port of Morrow, Hillsboro, Pendleton, Madras, Klamath County, Waldport and Scappoose.

activities because the investor will be looking to get reimbursed for expenses incurred to ready the site for development.

Other statutory changes that should be considered to improve the effectiveness of the RSIS Program include:

- Reducing the average annual wage threshold from 150% to 130% of county/state average annual wage. The reduced wage threshold would expand opportunities for rural communities to participate in the program. This change is based on statewide stakeholder feedback and Business Oregon's 2017 analysis of average wages from projects across Oregon that showed an average annual wage of 118%.
- Applying the wage/job threshold to combined jobs from all eligible employers on designated sites vs. jobs for each employer on-site (25 jobs in rural areas, and 50 jobs in urban areas). This clarification, which focuses on the number of jobs created rather than the number of employers, reflects the intent of the original 2013 legislation and would provide more flexibility in development outcomes that can benefit all participants in the program.
- Providing $5 million in funding to capitalize the loan portion of the program. This small investment in loan funding would allow smaller, rural communities to work with Business Oregon on site readiness challenges as well as larger local governments with more revenue and debt capacity.

Implementation steps:

1. Consult with Business Oregon on previous legislative experience related to proposed statutory modifications and guidance on approach and timing.
2. If timing and legislative support is there, establish working group of key economic development stakeholders to lead effort (e.g., Business Oregon, Industrial Land Coalition, Oregon Economic Development Association, League of Oregon Cities, Oregon Public Ports Association, NAIOP real estate brokers/developers) and communicate the benefits of expanding the use of this tool for private investment.
3. Seek input and support from other stakeholders and private development interests.
4. Develop legislative strategy and draft proposed bill language to revise existing statute.
5. Work with Business Oregon or state legislators to introduce the bill.
6. Support bill passage through legislative session, engaging testimony and advocacy from public/private partners.
7. Work with Business Oregon on revised administrative rule language and engagement of stakeholders on program changes and implementation.

Considerations:

Business Oregon proposed these statutory changes in Senate Bill 34 in the 2019 legislative session, but the bill died in committee. The timing of and approach to future legislative changes should be carefully considered and include consultation with Business Oregon. There were

significant concerns expressed in the 2019 session by key legislators associated with reimbursement of private developers/landowners and this type of incentive.

The RSIS Program is capped at $10 million a year statewide. Increased demand on the RSIS Program would put pressure on this cap on income tax reimbursement and extend the timeframe or reimbursement to local sponsors currently approved under the program.

With increasing state expenditure pressures (e.g., PERS, school funding), programs that tap future income tax revenues will be scrutinized. The “but for” nature of this program is a positive but may not be sufficient to mitigate this concern.