



IRS Regulations for Opportunity Zones & Brownfields Redevelopment

The Internal Revenue Service (IRS) regulation on [Investing in Qualified Opportunity Funds \(QOFs\)](#) is **designed to attract private investment** to census tracts designated as [Opportunity Zones \(OZs\)](#). The program offers significant tax advantages to private entities who have profits they earned from selling investments (known as “capital gains”) if they choose to invest those capital gains in a QOF associated with OZ census tracts.

- The law¹ allows investors who would otherwise have to pay taxes on their capital gains to defer those taxes by instead investing the gains in a QOF.
- IRS rules state that a fund designated as a QOF must invest at least 90% of its assets in a qualified OZ property or qualified OZ business.

Qualified OZ Business

A business where 70% of the property is within an OZ and 50% of the business’s total gross income is derived from active conduct of a trade or business within an OZ

Qualified OZ Property

Property within an OZ where the QOF investment commences an “original use” on the property or “substantially improves” the property (doubles the basis in the property) within 30 months

Investing in Brownfields Located in Opportunity Zones

Local government agencies may choose to use their public resources² to support assessment and cleanup activities at [brownfields](#) within OZ census tracts. Their upfront investment in these sites (as well as improving the surrounding infrastructure) demonstrates local commitment and clear redevelopment priorities. Clear commitment and priorities often increase private investor confidence, opening the door to possible QOF investments and other [leveraging](#) opportunities.

The final IRS regulation, which can be found in [Volume 85 of the Federal Register on page 1866](#) (85 FR 1866), includes several provisions to support QOF investment in brownfields assessment, cleanup and redevelopment, such as:

- **QOF investment in a brownfield or in a property that was involuntarily transferred to local government can satisfy the IRS requirement for commencing an “original use.”** (see 85 FR 1910-11)
 - According to the regulations, all real property composing a brownfield site, including land and structures located thereon, will be treated as satisfying the IRS’s requirement for commencing an “original use” on the site. This means the brownfield does not have to meet the strict time constraints of the IRS’s “substantial improvement”

¹ Qualified Opportunity Funds (QOFs) are an investment tool created under the Federal Tax Cuts and Jobs Act of 2017.

² Such as resources from state, tribal and local governments, [EPA’s Brownfields Program](#) or other federal programs.

Top caption: EPA brownfields funding allowed the City of Janesville, Wisconsin, to develop its own locally driven revitalization plan, which led to demolition of a parking deck that spanned across the Rock River and subsequent outdoor recreational improvements along the river within one of Janesville’s Opportunity Zones.



test. To qualify as “original use,” the QOF or OZ business investment in the brownfield site must ensure that the site meets basic safety standards for human health and the environment.

- According to the regulations, the purchaser of real property from a local government who held the property as the result of an involuntary transfer (including through abandonment, bankruptcy, foreclosure, or receivership) may treat all property composing the real property (including the land and structures thereon) as satisfying the “original use” requirement.
- Below is a summary of IRS requirements for QOF investment needing to either commence an “original use” on the property or “substantially improve” property:

In June 2018, the IRS certified OZ census tracts nominated by the governors of each state, territory, and the District of Columbia.

Over 8,700 low-income census tracts are designated as OZs. Many of these census tracts include properties that are (or potentially are) contaminated (e.g., brownfields).

For a site within an OZ purchased after December 2017	Satisfies “original use” requirement	Must “substantially improve” property
Site is bare land (including land purchased with buildings to be demolished for new development)	X	
Brownfield site (including the land and structures thereon) if within a reasonable period the owner makes investments to ensure that the site meets basic safety standards for both human health and the environment	X	
Site is vacant prior to and on the date of publication of the OZ designation and was vacant for at least 1 year prior to purchase of site	X	
Site not vacant at the time of the OZ designation but later became vacant and remained vacant for at least 3 years	X	
Non-brownfield site that does not meet vacancy requirements		X

- **Expenses for site assessment and remediation qualify as eligible costs that demonstrate “substantial improvement” at an OZ property** if the costs add to the basis of a property improved during the 30-month improvement period. (see 85 FR 1913-14)
- **Permitting delays caused by the government that would otherwise cause the QOF to fail the IRS requirement to deploy QOF capital within 31 months will be tolled³ for a duration equal to the permitting delay.** This includes delays associated with brownfields regulatory approvals if awaiting these approvals precludes any further action to complete the project. (see 85 FR 1925-26)

It is recommended that Local Government Agencies review the IRS regulations and seek tax counsel before considering QOF investment in brownfields assessment, cleanup and redevelopment. For more information, visit <https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions>.

³ “tolled” in this case means to delay, suspend or hold off the effect of a statute (<https://dictionary.law.com/Default.aspx?selected=2134>)



The Tenneco RCRA Site, located in Cozad, Nebraska’s Opportunity Zone, is a recipient of OBLR technical assistance revolving around strategic redevelopment planning.

Many Communities with OZ Census Tracts Received Assessment and/or Cleanup Resources from [EPA's Brownfields and Land Revitalization Program](#)

EPA's [Cleanups in My Community](#) is an interactive online map that includes an OZ census tract map layer. You can use the map to find which OZ census tracts include brownfields that were assessed or remediated using EPA resources since 2003.

- EPA's data reflect that 25% of the OZ census tracts include at least one property that was addressed by EPA's brownfields resources at some point.
- Many recent recipients of EPA brownfield grants are planning to use a portion of their brownfields resources to address sites within OZ census tracts.

Brownfields Redevelopment in Opportunity Zones Requires Local Leadership

Local government agencies retain the power to control the development activities that occur in OZs to meet local goals for equitable and sustainable development.

- Brownfield and other redevelopment projects require approval from the local municipality. The municipality can:
 - Create and align their local plans and apply zoning rules to a potential project to promote community-driven investments.
 - Judiciously approve (or disapprove) development incentives for a potential project.
 - Consider how community benefit agreements or inclusionary practices can help address concerns of possible displacement due to economic growth in previously distressed neighborhoods.
- [Communities can drive brownfields redevelopment](#) by:
 - Identifying promising [brownfield redevelopment projects](#) in OZs and eliminating barriers to redevelopment.
 - Painting the picture of redevelopment. In general, push community vision by forecasting how the site may look ten years from now, how the site can create value for the neighborhood, and what economic returns are expected.
 - Identifying specific redevelopment opportunities, or redevelopment categories (such as commercial, residential, industrial, warehouse). Clarify the possible opportunities to attract interest from the manager of the QOF (especially if the QOF specializes in certain types of development).
 - Convening a local OZ & Brownfields Forum to promote collaboration. Engage partners to demonstrate strong public support and well-organized local efforts to leverage investments in an OZ (for more information, see [EPA's Brownfields Stakeholder Forum Kit](#)).



In 2019, EPA Administrator Wheeler traveled to Dauphin County's Opportunity Zone to award the Dauphin County Redevelopment Authority with \$300,000 in Brownfields Assessment funding.

Additional Resources

EPA Websites

- [Understanding Brownfields](#)
- [EPA Opportunity Zones](#)
- [EPA Land Revitalization Toolkit](#)
- [EPA Brownfields Grants](#)

Providers of EPA Technical Assistance, Training, and Research to Brownfields Communities

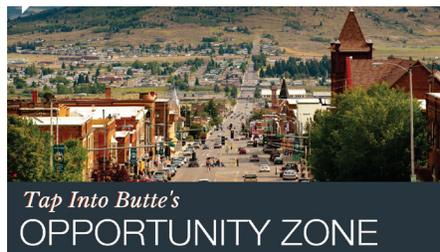
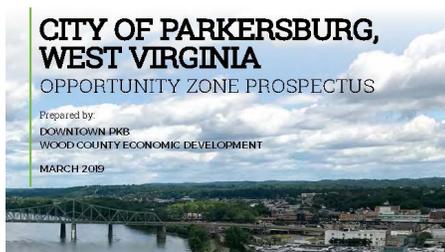
- [New Jersey Institute of Technology \(NJIT\)](#)
- [Kansas State University \(KSU\)](#)
- [Center for Creative Land Recycling \(CCLR\)](#)
- [Groundwork USA \(Equitable Development\)](#)

Other Federal Websites

- [Brownfields Funding & Financing \(Council of Development Finance Agencies\)](#)
- [White House Council on Opportunity & Revitalization](#)

Examples

Several communities with OZ census tracts developed an investment prospectus to share with potential QOF investors. Here are several examples:



Many states have created websites to highlight OZ properties, including:

