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SMART GROWTH OUTLOOK 2011:



CHALLENGES AND OPPORTUNITIES IN BROWNFIELDS,
AREA-WIDE PLANNING & IMPLEMENTATION



NPCR
NEW PARTNERS FOR
COMMUNITY
REVITALIZATION, INC.

J A N U A R Y 2 0 1 1

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AREA-WIDE PLANNING & IMPLEMENTATION

THIS REPORT WAS AUTHORED BY
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ABOUT NPCR

New Partners for Community Revitalization, Inc. (NPCR) is a 501c3 nonprofit organization formed to advance the revitalization of New York's communities with a particular focus on brownfield sites in and proximate to low- and moderate-income neighborhoods and communities of color.

The mission of New Partners for Community Revitalization, Inc. (NPCR) is to advance the renewal of New York's low- and moderate-income neighborhoods and communities of color through the redevelopment of brownfield sites. In collaboration with community, commercial, government and nonprofit partners, NPCR develops policies, programs and projects aimed at achieving the remediation and sustainable reuse of brownfield sites in New York.

The creation of NPCR as an independent nonprofit organization emerged out of a stakeholder process that began in 2001. Amid the multi-year policy debate that surrounded the passage of brownfields legislation in NYS it was recognized that low- and moderate-income (LMI) areas could be left behind without an organization devoted to developing programs and policies specific to LMI communities. NPCR Co-founder Jody Kass brought experience and contacts in affordable housing development; and Co-founder Mathy Stanislaus brought experience and contacts in environmental justice, environmental law and engineering. Together they became Co-Directors and invited a variety of people/organizations from different sectors to serve on the board of directors. On April 1, 2009, President Obama announced the nomination of NPCR Co-Director Mathy Stanislaus to Assistant Administrator for the Office of Solid Waste and Emergency Response, at the US Environmental Protection Agency. Mathy was confirmed by the U.S. Senate in mid-May and began his position at the USEPA on June 8, 2009. In June 2009, Jody Kass was made Executive Director of NPCR.

Recent NPCR Reports (available at www.npcr.net)

- May 2010 Update: Excerpt from NPCR's White Paper on *Using Public Dollars for Brownfield Site Assessment*
- *Fixing the NYS Brownfield Tax Credits*, March 2010
- November 2009 Update to *Addressing the Risk: Making Environmental Insurance Available for Brownfield Sites in New York City*, December 2009
- *Using Public Dollars for Brownfield Site Assessment*, June 2009
- *Analysis on the Use of Brownfield Tax Credits by Not-for-Profit Organizations*, February 2009
- *Addressing the Risk: Making Environmental Insurance Available for Brownfield Sites in New York City*, November 2008
- *Missing the Target: Making the Brownfields Tax Credit Work For Communities*, May 2007
- *Brownfields Breakthrough: A Report on New York's Revitalization Tool for the Future*, January 2007



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OVERVIEW

BROWNFIELDS POLICY IN TRANSITION: NEW OPPORTUNITIES FOR NEW YORK'S URBAN, DOWNTOWN AND UNDER-SERVED NEIGHBORHOODS

The New York State Brownfields Law, passed in 2003 following years of planning and advocacy was intended to launch a new era of revitalization and community renewal. Over 1,000 pages long, the law had two main parts: it created the landmark Brownfield Opportunity Areas (BOA) program; and it reorganized and statutorily authorized the state's voluntary brownfield cleanup program into a new initiative, the Brownfield Cleanup Program (BCP), with generous, as-of-right tax credits for developers who build on reclaimed land. Now, seven years and three Governors later, in a vastly changed economic climate and political landscape, it is time to take a hard look at the programs' successes and failures, and articulate the lessons learned to help inform the path for the future.

To date, more than 100 communities across New York have been admitted to the Brownfield Opportunity Areas program, with more expected soon. The municipal governments and community based organizations leading these BOA initiatives are giving hope to residents of some of New York's most distressed neighborhoods. The program has provided them a voice in determining the post-cleanup future of their communities, and the area-wide approach to community revitalization is becoming a national model for using smart growth strategies for urban revitalization.

Unfortunately, the other program created by the 2003 Brownfields Law, the Brownfield Cleanup Program, has not been the success its supporters anticipated. Despite a commitment of an estimated half billion dollars in refundable state brownfield tax credits, there are fewer cleanups taking place today than before 2003, when the State offered no financial incentives. Most recently, New York has decided to defer a significant portion of the tax credits until at least 2013. This may save money in the short run, but in just a few years, New York will have to begin paying out millions more for brownfield tax credits awarded between 2010 and 2012.

In this report, New Partners for Community Revitalization, a New York City-based nonprofit organization whose mission is to advance the renewal of low- and moderate-income neighborhoods and communities of color, looks at the successes and failures, strengths and weaknesses of these programs created by the 2003 law. Using smart growth principles as our lens, we identify new approaches and opportunities, particularly for environmental justice communities, and offer solutions that both strengthen the Brownfield Opportunity Areas program and correct fundamental flaws in the Brownfield Cleanup Program/Brownfield Tax Credits. And we demonstrate the growing potential of the area-wide approach to community revitalization. With this report, we intend to stimulate a public dialogue about reforms that will support New York State's job-generating and affordable housing development goals, correct environmental injustices, protect public health, clean the environment, support the State's leadership role in advancing smart growth initiatives, and protect scarce taxpayer dollars by targeting BCP tax credits to projects that really need state subsidies.

Background - Brownfields, “real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant,” number somewhere between 450,000 to 1,000,000 nationally,¹ and New York reports that nearly every community in the state is affected by contaminated and abandoned, or brownfield sites.² In the BOA program alone, there are over 50,000 acres affected by 4,700 brownfield sites.³ Brownfield sites range in size from under half an acre in urban areas to tens of acres in more rural areas and have been the site of myriad municipal, industrial, commercial and residential uses ranging from landfills, paint manufacturing and oil terminals, to rag cleaning and the ubiquitous dry cleaner and corner gasoline station. They are found in clusters along urban waterfronts that were historically used for shipping and industry, along street and highway corridors, in urban lands zoned for commercial and industrial use and on large, suburban/rural tracts.

As a result of the 1980 federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and other state and federal regulatory laws, such sites create a liability for cleanup costs for past and current owners, operators, waste transporters and lenders, to name a few, even if such parties were not responsible for the contamination.⁴ The costs, complexities and potential liabilities associated with brownfield conditions have a chilling effect on developers and lenders. Soil and groundwater contamination go unremediated, placing a serious restraint on private investment, private business development, job creation, community development, and the quality of life for the area’s residents and workers.

Brownfield sites compromise the economic future, social revitalization, and public health of the neighborhoods in which they are located. Moreover, many of the region’s brownfields are located in or near low- and moderate-income communities that have witnessed a long history of abandonment, disinvestment, and environmental degradation. As a result, not only are sites in the community contaminated and potentially impacting public health, but infrastructure is often old, substandard or altogether lacking. Local housing may be in disrepair or abandoned and there are higher rates of unemployment and fewer services for the community. These sites, with their particular combination of conditions, often present intractable obstacles to redevelopment using traditional approaches that focus on site-by-site tactics.

Residents, property owners, and community based organizations want to see these properties redeveloped, improved, and put to productive use. These sites are viewed as opportunities to meet real and pressing community needs — affordable housing, good jobs, educational and community facilities, waterfront access and open space — that are increasingly difficult to build. Revitalized brownfield sites offer a chance not only to increase the local tax base by putting property back on the tax rolls, but also to meet the needs of New York communities.

1. US General Accounting Office, 2004. BROWNFIELD REDEVELOPMENT: Stakeholders Cite Additional Measures That Could Complement EPA’s Efforts to Clean Up and Redevelop Properties available at: www.gao.gov/new.items/d05450t.pdf

2. NYSDEC, Brownfields Transform the Past, Build for the Future, available at <http://www.dec.ny.gov/chemical/brownfields.html>

3. Department of State, 2009, Brownfields Opportunity Area Program available at: <http://www.nyswaterfronts.com/downloads/PDFs/Progress Report 2009.pdf>

4. Siikamaki, J and Kris Wernstedt, 2008. Turning Brownfields into Greenspaces: Examining Incentives and barriers to Revitalization, *Journal of Health Politics, Policy and Law*, vol 33, no. 3

PART I. THE AREA-WIDE APPROACH – THE BASICS

THE AREA-WIDE BOA APPROACH TO REVITALIZATION: NEW YORK'S SMART GROWTH TOOL FOR URBAN AND DOWNTOWN NEIGHBORHOOD REVITALIZATION

The Brownfield Opportunity Areas (BOA) program emerged as an innovative new approach from the seven years of discussion and debate that preceded the passage of the 2003 New York State Brownfields Law. The BOA program responded to the needs of a diverse range of stakeholders and its area-wide approach is fast becoming a model for addressing community renewal challenges in urban, suburban and rural neighborhoods, both in weak market and strong market communities across the country. In New York, there are now over 100 communities, with more than 4,700 brownfield sites covering 50,000 acres, participating in the BOA program, making it one of the state's most successful smart growth initiatives.

The BOA program's area-wide approach was conceived as a tool to fight sprawl and achieve environmental justice by addressing entire neighborhoods and the clusters of brownfields within those neighborhoods, including the conditions fueling abandonment and decay. BOA was crafted as a tool to enable low-income communities burdened with multiple brownfield sites, high incidence of disease, and unemployment, to identify and implement alternatives to noxious uses as the primary future for reclaimed brownfield sites.

At its heart, the area-wide approach is about creating value. It recognizes that a program based on a "one-parcel-at-a-time" strategy will not result in the revitalization of distressed areas, and will frequently invite dirty or stigmatizing uses such as garbage transfer stations, sewage treatment plants, bus depots and fossil fuel power plants. Instead, the BOA area-wide approach can position a community to become part of the emerging green economy. It can reverse the cycle of disinvestment and decay by creating a plan for an entire community, including housing, shops, small manufacturing, green jobs, public amenities, and infrastructure improvements such as street lights, trees, parks, sidewalks and roadways. These are the things that together define functional communities and livable neighborhoods; that encourage current residents to remain while also attracting new residents.

Another key aspect of the area-wide BOA approach is its impact on sprawl and unplanned development. Increasingly, municipal and state governments cannot afford the new transportation, sewage, water, and other infrastructure required for the continued development of greenfields – both farmland and open space. Scarce public resources must be focused to revitalize already existing but



aging infrastructure in urban areas and downtowns. The BOA program's area-wide approach provides a vehicle to advance neighborhood-based, smart growth development.

THE AREA-WIDE BOA PROGRAM: A CORNERSTONE OF URBAN SMART GROWTH & SUSTAINABILITY

For years, most smart growth and climate change efforts have focused on preserving green areas, with less attention paid to rebuilding neighborhood and urban centers. But urban brownfields should be a focal point for smart growth and sustainability because of the concentration of distressed and contaminated sites in downtowns, community centers and urban cores. That is because redeveloping brownfields reduces the pressure on greenfield development and sprawl. National studies have concluded that every redeveloped acre of brownfield property saves 4.5 acres of greenfields.⁵ And compact urban development, as an alternative to sprawl, can reduce vehicle miles traveled (VMTs) by 20 percent to 40 percent.⁶ Studies of brownfield projects indicate similar VMT savings.⁷ This translates directly to emissions reductions and greenhouse gas savings of a similar or greater magnitude. (This is in part due to proximity to mass transit.) And, because brownfields are disproportionately concentrated in low-income urban and downtown communities, these properties also offer a significant opportunity to meet critical community needs for jobs, affordable housing and open space.

It is the BOA program that positions New York as an innovator in the nation's sustainability/smart growth movement. The BOA program's place-based approach offers real hope for reversing the economic and environmental forces that continue to slow economic redevelopment in upstate cities and to feed the seemingly inexorable creep of sprawling development. At the same time, it offers the City of New York a ready-made tool to achieve Mayor Bloomberg's long term sustainability and growth goals and to address the dwindling land supply while accomplishing environmental justice in low-income communities. On Long Island, and in Westchester and other wealthy suburban communities, the BOA program provides a tool that can both counter resistance to local development through public involvement in planning, and address the growing need for affordable housing by reclaiming impacted sites. More recently, the area-wide approach is starting to play an important role in helping localities address the foreclosure crisis, shrinking populations, and the need for updated infrastructure as cities across the nation are reeling from the contraction in the auto industry and the economic recession.

Through the BOA program, municipalities and community based organizations receive flexible grants for the investigation, planning, and market and infrastructure studies needed to carry out a constructive visioning process. BOA is based not on what is there now, or what the real estate market might otherwise attract or resist, but on what the community wants and needs. By looking at the area as a whole, the most productive, innovative and appropriately scaled end uses will be planned, creating new opportunities and helping put properties back on the tax rolls.

THE GOVERNOR'S SMART GROWTH CABINET – New York's Smart Growth Cabinet was created by Executive Order (#20) on December 4, 2007. As envisioned by then Governor Eliot Spitzer, the

5. NEMW, 2008. The Environmental and Economic Impacts of Brownfields Redevelopment available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>

6. Urban Land Institute, Smart Growth America, the Center for Clean Air Policy, and the National Center for Smart Growth, "Growing Cooler, Evidence on Urban Development and Climate Change," <http://www.smartgrowthamerica.org/gcindex.html>

7. US Conference of Mayors, "Clean Air/Brownfields Report," December, 2001.

Cabinet’s goal was to “oversee a comprehensive review of state statutes, regulations, policies, practices and capital programs that impact economic development and land use.” Its primary task was to “advise and make recommendations to the Governor on the most effective mechanisms to promote “smart growth” and related priorities.” These included identification of barriers to, and opportunities for, incorporating smart growth principles in state policies and decision-making; alignment of state grant-making and capital programs to foster smart growth development patterns; assessment of the effectiveness of existing state programs; and recommendations to facilitate state and local smart growth initiatives.

Initially, a \$2 million Smart Growth Fund was created as part of the state’s Environmental Protection Fund (EPF). Because smart growth applies differently depending on local conditions, three region-specific smart-growth initiatives were launched: the Lower Hudson Valley, the Adirondacks, and the central Catskills. Initially focused on the preservation of open space and protection of greenfields, the new program lacked a focus on the growth needs of urban and downtown neighborhoods and communities of color and demonstrated little understanding of the significance of these for genuine smart growth and sustainable development.

This problem was addressed in 2008 when the Smart Growth Cabinet broadened its focus and began supporting pioneering initiatives that featured increased inter-agency cooperation. In November 2008, Governor Paterson and Secretary of State Cortes-Vazquez announced The Brownfields Smart Growth Spotlight Communities Initiative and effectively established the nation’s first urban smart growth brownfields strategy, rooted in the BOA area-wide approach. The Spotlight Communities Initiative began by addressing the needs and revitalization objectives of three selected communities - the South Bronx, South Buffalo, and Wyandanch in the Town of Babylon on Long Island — which are serving as laboratories in which key smart growth principles are being advanced. Along the way, an ongoing evaluation of what works well and what does not, is informing the state’s program activities to help communities facing similar problems. Results to date indicate an unprecedented level of collaboration, problem-solving, and coordination of resources. Area-wide approaches enable communities to comprehensively assess existing economic and environmental conditions associated with blight and concentrations of multiple brownfields, identify and prioritize community supported redevelopment opportunities, and attract public and private investment to implement projects.

Subsequently announced in December 2009, the Place-Based Regional Collaboration Pilot is also rooted in the BOA program and builds on the Spotlight Communities Initiative. It capitalizes on commitments from existing state programs and resources to support implementation of locally generated BOA plans. By utilizing a “regional” approach it allows for collaboration across communities and adds another dimension to the area-wide approach. Proximate neighborhoods with similar problems can share research and analysis, thereby developing more efficient and coordinated implementation strategies, particularly with respect to common infrastructure concerns. The place-based solutions that



At the NPCR 2009 Brownfields Forum; from l to r: John Frece, USEPA; Sharon Pugh, USDOT, FTA; NY Secretary of State Lorraine Cortes-Vazquez; David Lloyd, USEPA; Jody Kass, NPCR; and Joe Rende, National Grid.

emerge will be targeted and, at the same time, will maximize government resources. This bottom-up, regional area-wide approach to brownfields redevelopment and community revitalization is focused on delivering coordinated government resources to distressed urban and downtown areas and will result in economic development, job creation, increased tax revenues, smart growth, and healthy communities. The Place-Based Regional Collaboration Pilot is linked to the Obama Administration's Partnership for Sustainable Communities. In December 2009, the US Environmental Protection Agency and the US Department of Transportation, committed to partnering with the New York Department of State (DOS) on the pilot initiatives, and these are now getting underway in Brooklyn and Syracuse.

SMART GROWTH PUBLIC INFRASTRUCTURE POLICY ACT – New York's smart growth agenda further evolved with passage of The Smart Growth Public Infrastructure Policy Act during the 2010 legislative session. The Act creates a negative screen so that state infrastructure investments can only be made if they are in accordance with "smart growth criteria." BOA was specifically cited in the new Law as one of the new criteria. Unfortunately, there is nothing in the Law that would prevent the award of funds to projects that are inconsistent with a BOA plan. Rule-making or guidance should be undertaken to clarify that funding decisions can only satisfy the smart growth test if the project is not inconsistent with a BOA plan. In addition, because the new law lacks priorities, it can be interpreted extremely broadly. It would be more effective if program rule-making or guidance reflected clear State priorities along with a mandate to undertake proven approaches.

ECONOMIC DEVELOPMENT AND THE AREA-WIDE APPROACH: SMART INVESTMENTS IN SMART GROWTH POLICIES LAYING THE GROUNDWORK FOR ECONOMIC DEVELOPMENT

Brownfield remediation and redevelopment is a powerful driver for economic growth and stability. Brownfield investments are creating commercial anchors and vital new urban and downtown places, adding jobs, increasing property values and strengthening local tax bases. The BOA program, administered by the DOS, is laying the groundwork for this boost in economic growth by providing the necessary guidance, expertise and funding to transform 50,000 acres of property affected by over 4,700 brownfields. Because the BOA program is relatively new and revitalization efforts take time, an analysis of the program benefits is necessarily preliminary and will need refinement as the program matures. Nonetheless, a review of the national data suggests that the benefits of BOA are wide-ranging and significant. The successful revitalization of the 100 neighborhoods already in the BOA program is projected to create 27,500 to 45,500 jobs across urban, suburban and rural areas.^{8 9}

8. It may be conservatively assumed that five brownfield sites per BOA study area will become strategic sites that may be eligible for direct local, state or federal funds. With that assumption, and the Northeast-Midwest Institute (NEMW) statistic that, on average, each brownfield site has the potential to create 91 jobs, the five sites within each BOA Study area have the potential to create 455 jobs. Given that there are currently over 100 BOA study areas in NYS, this translates to 45,500 jobs. (NEMW, 2008. The Environmental and Economic Impacts of Brownfields Redevelopment available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>).

9. Again, it may be conservatively assumed that five brownfield sites per BOA study area will be strategic sites that may be eligible for direct local, state or federal funds, and assuming that each of the five brownfields in each study area is close to the national average of 5 acres, 25 acres would be developed per BOA study area. With that assumption, and the statistic developed by Howland (2007), that on a national basis, 10 to 11 jobs are created per developed acre, 275 jobs would be projected for each BOA Study area. Given that there are currently 100 BOA Study areas in NYS, this translates to 27,500 jobs (Howland, Marie, 2007. Employment Effects of Brownfields Redevelopment, What Do We Know from the Literature? Journal of Planning Literature, 2007, vol. 22, p. 91 available at <http://jpl.sagepub.com/cgi/reprint/22/2/91>)

These jobs are projected to generate an annual wage-related tax flow of up to \$100 million.¹⁰ In addition, the \$25 million of BOA funds invested are projected to lead to significant additional public investment that will leverage an estimated \$400 million.¹¹ The projected benefits are likely to be conservative. The estimates do not fully account for the synergistic economic or “linchpin” effect that can be created by the momentum of several redevelopment projects occurring in one area with the collective support of the community.¹²

REVITALIZING NEW YORK STATE - Communities burdened by multiple brownfield sites are often trapped in a downward spiral of disinvestment and decay and require a far more comprehensive approach to revitalization than the traditional site-by-site approach. The area-wide approach provides communities with funding and the tools to assess the economic and environmental conditions associated with brownfield impacted areas, to identify and prioritize community supported redevelopment opportunities, to garner the collective support of local, state and federal agencies and to advance and implement priority projects. By looking at areas as a whole, the most productive, innovative, and appropriately scaled end uses will be planned, all while mitigating historic, current, and future environmental injustices. At its heart, the area-wide approach to brownfields reclamation is about creating value and providing environmental, social and economic benefits to communities disproportionately impacted by brownfields and other environmental burdens.



Fifth Avenue Committee's Groundbreaking Ceremony for Atlantic Terrace in Brooklyn, NY

10. Howland's research shows that economic benefits estimated using a dynamic simulation model predict that on a national basis, 10 to 11 jobs are created per developed acre with an annual tax flow of \$5,470 per job. In this case, assuming that each of the five brownfields in each BOA study area is close to the national average of 5 acres, 25 acres would be developed per BOA study area creating 275 jobs and an annual tax flow of \$1.5 million per BOA study area. (Howland, Marie, 2007. *Employment Effects of Brownfields Redevelopment, What Do We Know from the Literature?* Journal of Planning Literature, 2007, vol. 22, p. 91 available at <http://jpl.sagepub.com/cgi/reprint/22/2/91>)
11. NEMW estimates that every \$1 of public brownfields funds leverages between \$8 and \$20 of total investments. Therefore, if each BOA study area were conservatively to receive \$100,000 in public funds for each of 5 sites, the total investment of \$500,000 in public funds could leverage between \$4,000,000 and \$10,000,000 for each study area (NEMW, 2008. *The Environmental and Economic Impacts of Brownfields Redevelopment* available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>).
12. NEMW, 2008. *The Environmental and Economic Impacts of Brownfields Redevelopment* available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>.

Site revitalization efforts create economic benefits and these same benefits accrue to and catalyze additional paybacks to communities that are implementing area-wide brownfield redevelopment programs. The area-wide approach also creates highly favorable conditions for “the linchpin” effect in which brownfield revitalization is the catalyst that leads to the transformation of whole neighborhoods and districts.¹³ It is the transforming of proximate abandoned or underused properties that creates a chain-reaction of positive events, and when several properties within a defined area are redeveloped, the chain reaction is that much more powerful. While the linchpin effect of the BOA area-wide program has not been quantified, conservative conclusions about the impacts of brownfield development via area-wide planning can be drawn based on existing studies of the benefits of individual site redevelopment. Explored below are several important economic development indicators that verify the significant value of the public dollars invested in the area-wide BOA program.

Jobs: Revitalization efforts create pre-development jobs associated with redevelopment and community revitalization planning; site investigation, remediation and construction jobs and post-development commercial and industrial jobs associated with the new land use.

- **PRE-DEVELOPMENT JOB CREATION:** The DOS investment of \$25 million in the BOA program is projected to create and/or maintain 833 pre-development jobs.¹⁴ These include jobs for local community based-organizations, urban designers and planners, environmental scientists, economic consultants, and other personnel involved in BOA planning and site investigation.¹⁵ Such additional jobs may include architects, landscape architects, transportation and infrastructure engineers, marketing and real estate consultants and archaeologists.
- **POST-DEVELOPMENT JOB CREATION:** It is projected that each BOA study area has the potential to create between 275 and 455 jobs.¹⁶ Given that there are currently over 100 BOA study areas, this translates to between 27,500 and 45,500 jobs across New York State. These numbers are conservative because they do not take into account the “linchpin” or synergistic effects that redevelopment of strategic sites will have on the larger BOA study area.

13. Ibid and EPA, 2003. For EPA's Brownfields Programs, “Green” Refers to More than the Environment available at: http://www.epa.gov/sverosps/bf/success/Green_Money.pdf

14. NYC commissioned an analysis of job creation associated with PlaNYC and of particular interest for this report is the estimate of jobs created in connection with the Local Brownfields Cleanup Program (LBCP) and the Brownfields Incentives Grant (BIG) Program. The report, prepared by The Louis Berger Group, Inc. provides an estimate of the jobs created in connection with implementing the LBCP and conducting investigative and other activities under the LBCP, it does not consider jobs created after redevelopment. The report, entitled “Analysis of Job Creation in PlaNYC Final Report” is available at http://www.nyc.gov/html/om/pdf/2008/pr110_planyc_job_creation_analysis.pdf. Berger estimates that OER's \$15 million leveraged 500 jobs, by a simple ratio, DOS's \$25 million would leverage 833 jobs. While the analysis is not directly comparable because some of OER's money is set aside for incentive bonuses, both grants provide funds for the hiring of consultants to conduct work on behalf of the developer/grantee and so were deemed similar for the intent of this report.

15. “Louis Berger Group, March 2008, Analysis of Job Creation in PlaNYC Final Report, available at http://www.nyc.gov/html/om/pdf/2008/pr110_planyc_job_creation_analysis.pdf

16. See footnotes 8 and 9 above using information from NEMW, 2008. The Environmental and Economic Impacts of Brownfields Redevelopment available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>) and from Howland, Marie, 2007. Employment Effects of Brownfields Redevelopment, What Do We Know from the Literature? *Journal of Planning Literature*, 2007, vol. 22, p. 91 available at <http://jpl.sagepub.com/cgi/reprint/22/2/91>. Data from NEMW and Howland yield a range of 27,500 to 45,500 jobs and the lower of the estimates may be more realistic when urban areas are taking into consideration. In urbanized areas, where densities are higher and properties are smaller, the job creation statistic has to be adjusted for size. In NYC, it is conservatively estimated that 10 to 11 jobs are created per half acre of brownfield development (The NYC Mayor's Office of Environmental Remediation has established a Local brownfield Cleanup Program and will begin collecting job creation statistics on each site that enters the program in order to more accurately quantify the economic benefits of redevelopment). NYC currently has 17 BOA study areas and assuming that NYC brownfield sites are, on average, one acre in size, and that there are five brownfield sites within each BOA study area, the sites in all 17 BOA study areas would generate 1,870 jobs in NYC.

Preservation of Open Space/Greenfields: The BOA program is preserving valuable open space by preventing new development on an estimated 11,250 acres of greenfields.¹⁷ Preservation of greenfields provides a host of benefits including improvements to air quality and maintenance of open space, both of which contribute to a community's overall health and quality of life.

Public Investment Leverages New Investment: The BOA program is laying the groundwork for leveraging between \$4 million and \$10 million in private and public investment in each study area.¹⁸ With 100 BOA study areas, this could conservatively lead to an estimated \$400 million in investments across the state.

Property Values: Studies show that brownfield redevelopment leads to a 5 percent to 15 percent increase in property values within $\frac{3}{4}$ mile of the site.¹⁹ An increase in BOA study area property values is an important economic benefit that increases homeownership values and also increases tax revenues. However, it is also important to note that it can have the unintended consequence of raising rents and causing displacement, which is a critical issue in low- and moderate-income neighborhoods, and underscores the need for authentic community engagement in the area-wide approach.

Generation of Local Tax Revenue: As property values increase, both on the redeveloped properties and the adjacent properties, so will local tax revenues. With the conservative assumption that local tax revenues only increase on the five strategic sites in a BOA study area, local tax revenues within a typical BOA study area are estimated to increase by about \$3 million annually.²⁰

Savings in Transportation Related Externalities: It is projected that each BOA study area will save about \$675,000 in transportation-related indirect costs or up to \$67 million in savings across New York's 100 BOA communities.²¹ Redevelopment on denser urban brownfields where public transit options are available means less vehicle usage and fewer vehicle miles traveled relative to new development on greenfields. Therefore the indirect costs — externalities — related to transportation, such as parking, accidents, and pollution related health costs, are lower on brownfields redevelopment projects than on greenfields development.

17. According to NEMW, 4.5 acres of greenfields are preserved for every acre of brownfields redeveloped. Theoretically, if there are 100 BOA Study Areas in NYS, each with five strategic sites five acres in size that are redeveloped, then the BOA Program has or will preserve 112.5 acres of greenfields per BOA study area or 11,250 acres state-wide.

18. NEMW estimates that every \$1 of public brownfields funds leverages between \$8 and \$20 of total investments. Therefore, if each BOA study area were conservatively to receive \$100,000 in public funds for each of 5 sites, the total investment of \$500,000 in public funds could leverage \$4,000,000 and \$10,000,000 for each study area. (NEMW, 2008. The Environmental and Economic Impacts of Brownfields Redevelopment available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>)

19. NEMW, 2008. The Environmental and Economic Impacts of Brownfields Redevelopment available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>)

20. Based on a review of brownfield projects in the 2007 USCM survey, NEMW estimated an average local tax generation of \$626,000 per site (NEMW, 2008. The Environmental and Economic Impacts of Brownfields Redevelopment available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>)

21. According to NEMW, research by De Sousa in Toronto, Canada, determined that the external costs associated with transportation (ie parking, accident, air pollution and health costs) were about \$27,000/acre lower for brownfields redevelopment in the city than for greenfields development. Assuming there are five five-acre strategic sites within each BOA study area, or a total of 25 acres, that equates to \$675,000 in savings. NEMW, 2008. The Environmental and Economic Impacts of Brownfields Redevelopment available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>)

Savings in Infrastructure Investment: Brownfields typically have some infrastructure, such as sewers and water lines, in place, whereas greenfields have none. As a result, redevelopment of brownfields yields substantial savings in infrastructure investment. Current efforts to quantify the difference have been inconclusive but suggest that the ability to reuse infrastructure on brownfield sites may save 10 percent to 35 percent on the infrastructure costs associated with development.²²

Environmental and Social Benefits: It is also important to recognize the social and environmental benefits of the brownfields area-wide approach and how these benefits can indirectly translate into economic benefits. For example, building a park on the waterfront provides waterfront access and additional green/open space which can improve a community's health and quality of life and reduce medical expenses. These benefits are sometimes difficult to quantify, but they are an important factor that should not be over-looked in assessing the total value of area-wide redevelopment activities and determining the value of public investment.



Nature Walk at the Newtown Creek Wastewater Treatment Plant, Brooklyn, NY

Environmental Benefits

- Contamination removed/ site remediated
- Protection of adjacent natural resources
- Green/more sustainable redevelopment
- Incorporation of new parks and other amenities
- Improve/protect public health
- Improvement to air quality
- Improvements in storm water management/quality

Social Benefits

- Improvement to neighboring properties and businesses
- Improve/increase waterfront access
- Overall quality of life improvement
- Preserve and increase green space
- Additional/improved public space and facilities
- Downtown improvement
- New market rate housing
- Affordable and special use housing
- Reuse of existing infrastructure
- Blight mitigation
- Sprawl reduction

22. NEMW, 2008. The Environmental and Economic Impacts of Brownfields Redevelopment available at: <http://www.nemw.org/index.php/policy-areas/brownfields/environmental-and-economic-impacts-of-brownfields-redevelopment>)

PART II. KEY ELEMENTS OF THE AREA-WIDE APPROACH

New York’s area-wide approach to community renewal is focused on creating new tools and resources that can be used by residents in low- and moderate-income urban and downtown communities with myriad environmental injustices. It is fast becoming an important part of the larger national smart growth discussion. With more than 100 communities already participating in the BOA program in New York, much has already been learned.

NPCR has identified Seven Key Elements of the Area-Wide Approach:

- I. Authentic community engagement & resources for local leadership
- II. Program flexibility – different problems require different solutions
- III. Inter-agency coordination & cross-government collaboration
- IV. Programmatic preference and priority to achieve implementation of the area-wide BOA approach
- V. Targeted Brownfield Tax Credits & an accessible, predictable Brownfield Cleanup Program to advance area-wide plans
- VI. Environmental Insurance: A potentially valuable tool to advance the redevelopment of brownfield sites
- VII. New Tools for area-wide plan implementation

I. Authentic Community Engagement & Resources for Local Leadership

As the area-wide approach evolves as a tool to address community revitalization challenges, it is becoming increasingly important to articulate the features and significance of authentic community engagement upon which it is built.

Authentic Community Engagement defined: *Authentic community engagement in the area-wide approach has evolved to mean the ongoing, meaningful participation by neighborhood residents in the decision-making that impacts their neighborhood.*

Background – The authentic community engagement envisioned in the BOA area-wide approach was conceived and developed on a parallel track with the development of the area-wide approach itself. It is rooted in the seven years of policy debate that preceded the 2003 Brownfields Law during which community based organizations (CBOs) from New York City’s marginalized low-income communities of color fought for a more comprehensive and transparent approach and one that would give them a seat at the decision-making table. These CBOs were fed up with top-down land use decision-making that had resulted in the siting of a disproportionate number of incinerators, waste transfer stations, and power plants in their communities. Many of these communities already bore more than their fair share of the waste management and other heavy industrial activities that were causing widening health disparities. The orientation of these groups was informed by the recognition that the existing “one-parcel-at-a-time” strategy was not resulting in the affordable housing, open space, and job generating end uses desired by the community; and that the existence of multiple abandoned and decaying brownfield sites were instead inviting more dirty or stigmatizing ‘low’ uses such as garbage transfer stations, sewage treatment plants, and fossil fuel power plants. With BOA, the CBOs were determined to build in mechanisms that

would empower local community leaders by providing them with a meaningful role in decision-making and substantial resources for planning and project implementation. A hallmark of the BOA program that emerged from this intensive public policy debate is the leadership role of community representatives over a sustained period of time in the planning and implementation of the vision for the future of their communities.



Authentic Community Engagement vs. Community Participation - Authentic community engagement differs significantly from community participation as understood in the traditional paradigm of environmental and land use decision-making. A community is authentically engaged when it is involved at the outset in setting the scope and process of decision-making. By contrast, in more traditional community participation efforts, communities are only invited in after most of the key decisions have

been made (which explains why many have to resort to confrontational tactics to have their concerns addressed). Reflecting the gap in understanding the key differences between community engagement and community participation was the question posed numerous times during the public debates leading to the 2003 Brownfields Law, "So what are you looking for, TAG grants for the nonprofit groups?" TAG grants do not provide for a role in decision-making; underscoring the conclusion that bridging this gap requires nothing short of a paradigm shift.

Community participation is generally characterized as providing community members with an opportunity to voice their opinion in the decision-making process that is already underway and under the control of outside entities. For example, the siting of a waste transfer station typically involves a for-profit corporation seeking a permit from a regulatory agency. The community participates via a one-way exchange either through written comments, or, if required, through comments at a public hearing. Community participation is limited to being reactive late in the decision-making process, and it is focused not on the larger needs of the people living and working in the neighborhood, but on the site-specific plans being proposed by an outsider. Moreover, communities often feel that their comments are ignored, and that the 'community participation' is an orchestrated formality that must be endured by those with the power to make the actual land use, siting or permit decisions. The same holds true for typical community participation processes relating to brownfield redevelopment projects. Communities are given the opportunity to react to the remedial plans and documents prepared by external entities who view the community as one more hurdle in the race to complete the project, despite the fact that it is the community members who will live with the outcome of the decision-making for years to come.

While community participation in remedial planning often results in better cleanups than would otherwise occur if the external entities were left to themselves, the process uses up the community's time, energy and trust, resulting in weakened community relations, especially as the ultimate decisions on the project and the surrounding impacted area rarely change in any marked way.

Authentic community engagement on the other hand begins with the community itself and is a process in which the community draws from external entities to inform and elaborate on its vision. It is enabled by substantive, flexible public resources which are under the control of community leaders. Communities are engaged by their own leaders and CBOs to share their experiences, ideas and local knowledge as they express their vision and goals for their neighborhood's future revitalization. Authentic community engagement in the area-wide approach is characterized by the following:

- It is collaborative, rather than adversarial;
- It is unifying, rather than polarizing;
- It is proactive, rather than reactive;
- It builds trust and social capital, rather than fueling distrust;
- It recognizes that the community residents are the “experts” on defining neighborhood priorities;
- It is oriented to the long range view and commitment rather than short term mobilizations;
- It seeks to encompass and include the wide diversity of community sectors and interests, while remaining committed to and reflective of the indigenous majority of the community;
- It is characterized by emotional moderation rather than emotional intensity, in part because it represents an alternative approach to the injustices suffered by impacted communities;
- It begins and continues in the spoken words and languages of the community, even as technical vocabularies are deployed, avoiding the confusion of obscure terminologies;
- It incorporates facilitated meetings that encourage maximum input from all sectors of the community;
- Technical advisors and other professionals are hired and managed by the community;
- Significant financial resources are available to the community to support ongoing, sustained leadership during the lengthy planning and implementation processes;
- Leadership and decision-making are rooted in the community, rather than in external entities;
- It is focused on a wide area, and informed by the interrelationships of many sites and their connecting infrastructure, rather than focused on a single site;
- The communication and decision-making procedures are transparent, guided by clear rules;
- The process itself is shaped by the community - the way the community is engaged, the timing and the pace – not the consultants, project deadlines or private interests.
- It focuses on what is good for the whole community, rather than on what is good for a single narrow interest.

“Community” defined²³ - There has been much debate over how to define “community” in the context of community engagement. A community is authentically represented when the leadership reflects the indigenous demographic majority population. For so many urban communities that have gentrified, it is critical that the indigenous demographic majority be part of the leadership of an area-wide planning effort in order for the effort to retain authenticity and integrity among the indigenous residents. The presence of such leadership is a signal that the planning process is truly inclusive and as such invites indigenous community support rather than opposition. Such leadership also helps to avoid the risk that an area-wide plan is seen as, or in fact becomes, a blueprint for further gentrification.

Community engagement is authentic when its leadership reflects a conscious outreach to different community sectors. Demographics aside, there is no single monolithic community in an area – rather, a community is comprised of multiple sectors, such as churches, small businesses, non-profits, schools, civic organizations, etc. For an authentic community area-wide plan to emerge, all sectors of a community must be invited to the table.

23. This view reflects the experience of CBOs in NYC's low- and moderate-income communities of color, i.e., environmental justice communities. It is recognized that impacted communities upstate operate under significantly different conditions, especially that of scale. For example, a CBO in NYC might work in an area with 200,000 residents; while an upstate municipality might serve a population of 11,000.

When the area-wide approach is carried out with robust authentic community engagement in the decision-making, then site-specific decisions occur within that context, and a strong foundation is laid for the community to support the site-specific decisions that will arise in the future. The authentic community engagement embedded in the area-wide approach sets the context for all the site-specific decisions that follow.

Resources to support authentic community engagement - An essential feature of authentic community engagement is that substantial, flexible resources are made available to communities and CBOs to support and sustain engagement over the long period of time required for the area-wide approach. These resources pay for CBO staff time necessary for outreach to community stakeholders, coordination of activities among different community and governmental sectors and agencies, the management of consultants, and the process of building consensus around the community's vision. In addition, resources are available to hire technical expertise to conduct the environmental investigations, transportation and infrastructure studies, and demographic and market analyses required to demonstrate the feasibility of alternative proposals of the community vision. The resources must be flexible so that different communities can use them according to their neighborhood-specific conditions, needs and goals. A waterfront industrial community that wants to preserve and expand industrial activity while opening access to the waterfront will need different types of studies than a landlocked community seeking affordable housing and complementary uses such as recreation and retail. In addition, supportive services such as translation, transportation and child care, must be available to allow for the full involvement of all sectors of the community.

EPA's Community Engagement Initiative - There is considerable overlap in the characteristics of authentic community engagement articulated above and the guiding principles of the EPA's Community Engagement Initiative (CEI), which was released by the EPA's Office of Solid Waste and Emergency Response (OSWER) in May 2010. According to the CEI, "In the broadest sense, community engagement in environmental decision-making is the inclusion of the community in the process of defining the problem and developing solutions and alternatives."²⁴

The CEI Action Plan outlines four guiding principles:

- Proactively include communities in decision-making processes;
- Make decision-making processes transparent, accessible and understandable, and include a diversity of stakeholders;
- Explain government roles and responsibilities;
- Ensure consistent participation by responsible parties.²⁵

While EPA's principles do not include some important elements of the authentic community engagement envisioned in the BOA area-wide approach, the principles are an important step toward articulating and institutionalizing the characteristics of authentic community engagement. In addition, through its pilot Brownfields Area-wide Planning Program, the EPA awarded \$175,000 to 23 pilot communities across the country to carry out area-wide planning activities in October 2010. It will be important for authentic community engagement to be the foundation upon which the pilot program and resource expenditure moves forward.

24. *Community Engagement Initiative Action Plan*, Office of Solid Waste and Emergency Response, EPA. May 2010, p. 2.

25. *Ibid.*, p. 2-3

II. Program Flexibility - Different Problems Require Different Solutions

New Yorkers across the State are finding new and different solutions to a wide range of problems as they work towards the revitalization and renewal of their communities. As a result, flexible resources are needed to respond to and support the plans and projects that are emerging. Two cornerstones of a successful area-wide planning and implementation program are i) a clear, but flexible framework and ii) funds that can be used in a flexible way for planning and implementation strategies.

It is the flexibility of the program framework and these funds that makes the BOA program attractive to small villages and dense urban cities, alike – and in weak market and strong market regions across the state. This built-in flexibility is an extraordinary element of the area-wide approach in that administrators of government programs are frequently more comfortable administering a “cookie cutter-type” program.

Flexible Planning Framework – The BOA planning framework can be adjusted and tailored to meet specific community needs. The BOA Program enables municipalities and community organizations to prepare area-wide revitalization plans that include: community visioning and other public participation processes; existing conditions analysis; economic and market studies to assist in determining the best use of brownfields and vacant sites; investigations to assess environmental conditions; site-specific redevelopment plans; marketing materials to attract developer interest; and other actions to spur investment, clean-up and redevelopment of brownfield sites. These types of activities are advanced via three program steps:²⁶

- Pre-Nomination Study (Step 1) – This step of the program enables a community to undertake and complete a preliminary analysis of issues and opportunities in the proposed BOA so communities can develop a basic assessment of and understanding about existing conditions, brownfields and the area’s potential for revitalization. This step sets the stage for more detailed work.
- Nomination (Step 2) – This step (which is available to communities who have completed a Step 1 or the equivalent) enables communities to conduct an in-depth assessment and evaluation of existing conditions; identify assets and opportunities in the study area; undertake an economic and market trends analysis to determine the best opportunities and reuse potential for strategic sites, and to identify actions for revitalization.
- Implementation Strategy (Step 3) – The Implementation Strategy provides funding for a range of techniques and actions to implement the area-wide plan, advance redevelopment on strategic sites, improve supporting infrastructure, and achieve revitalization objectives.

Each step builds on the prior, allowing plans and projects to be re-evaluated, refined and prioritized by the community along the way. This leads to the identification of the projects that will have the greatest impact, which in turn allows community members to focus further efforts on obtaining specific resources and funds to support those specific projects.

The flexibility inherent in the BOA program allows each community the ability to autonomously plan for its own distinctive future. Moreover, program flexibility is the key to making the BOA program work in so many different communities. Urban, suburban and rural communities across New York State receive equal benefits from the program. In some communities, municipalities are leading projects and in others, the BOA planning process is being led by community based organizations, many of which may not traditionally receive state support.

26. Source: NYSDOS Program Guidance on DOS website

Flexible Funding Framework: The statute that governs the use of BOA funds provides wide flexibility and as a result, BOA funds are being used to support a wide variety of pre-development, planning and implementation activities. BOA funds are routinely being used for the following activities:²⁷

Eligible Activities for BOA Nomination Studies

- Community visioning
- Public participation plans
- Land use, zoning, planning
- Building, infrastructure and utilities assessments
- Transportation system assessments
- Inventory of sites (vacant, abandoned, brownfields)
- Site reconnaissance
- Phase I site assessments
- Analysis of site constraints, needs and opportunities
- Identification of strategic sites
- Economic/market trend analysis
- Redevelopment alternative analysis
- Financial gap analysis
- Build out assessments
- Land assemblage strategies and financial analysis
- Tax lien property analysis
- Land ownership survey and analysis
- Identification of key findings and recommendations

Eligible Activities for BOA Implementation Strategies

- Strategic site end use analysis
- Zoning and other local laws
- Develop design standards and guidelines
- Identification of projects for neighborhood revitalization
- Conceptual designs and cost estimating for strategic sites
- Due diligence for site acquisition
- Site marketing, renderings, brochures, descriptive profiles
- Infrastructure and transportation improvement studies
- SEQRA compliance and generic environmental impact statements
- Phase II site assessments
- Description of local, state and federal programs to assist in implementation
- Local management structure to ensure plan implementation

BOA funds are also sufficiently flexible to accommodate communities in different stages of planning. Many communities have already completed planning processes through which local priorities for redevelopment have been defined. In these cases, BOA flexibility can support additional research, additional community engagement or more tangible activities that help move a community beyond planning and toward project implementation. And, as the BOA program evolves, grantees continue to find new ways to use BOA funds, a further testament to the flexibility of the program framework and funding. Recent examples of innovative BOA funded activities include:

- Production of a citizen education guide
- Bulkhead analysis and renovation strategies
- Industrial real estate market analysis
- Incorporating green building elements into redevelopment projects
- Establishing or expanding economic improvement districts
- Greenway design/transportation network analysis
- Strategies for promoting sustainable business practices

27. Department of State, Brownfields Opportunity Areas Program, Practitioner Perspective, presented at the NYS Brownfield Coalition Seminar, October 27, 2010.

III. Inter-Agency Coordination and Cross-Government Collaboration

The myriad government agencies that have a hand in the implementation of community revitalization plans are necessarily organized according to specific sectors, (such as housing, transportation, economic development, parks, etc.) As a result, very few neighborhood improvements can occur without involving multiple government agencies. For example, the construction of a house requires sign-offs by agencies involved with sewers, water connections, highways, buildings, land use and others. In addition, neighborhoods are multi-dimensional and changes in one project or one part of a neighborhood will frequently have repercussions for the whole area. As a result, effectively and efficiently implementing multi-dimensional area-wide plans presents a series of agency coordination challenges. This is frequently referred to as “getting agencies out of their silos.” The challenge presents itself both in terms of securing inter-agency coordination across sectors; and, since government frequently has a role at the municipal, state and federal levels, it also requires cross government collaboration.

Experience with the Spotlight Communities Initiative reveals that inter-agency meetings and workshops with the community are a cornerstone of collaboration, and an important mechanism for breaking down government agency silos. The physical presence at inter-agency meetings of senior representatives from each of the agencies involved in plan implementation is crucial. Agency representatives must be able to engage and converse about reliable and up-to-date opportunities and resources available via different programs, particularly about how communities can be competitive for such resources. Tips on agency discretionary practices and other insights that are not readily discernable from a web site or guidebook are sometimes invaluable. In addition, the representative(s) must be familiar with the agency’s programs, timelines, and practices, and have a problem-solving attitude and orientation. By sharing information, expertise, experience and advice, government officials provide communities with valuable technical assistance. In addition, having the agencies in one room together, listening to each other and the needs of the community often results in unanticipated areas of collaboration and synergies. These workshops and the associated collaboration are a critical component of problem-solving as agencies look at issues from different angles. These varied perspectives can help craft unexpected, innovative, and synergistic solutions.

Asking agencies to “get out of their silos” and to take the time to work cooperatively together, especially as budgets are being cut and agencies are being asked to do more with less, is a tough proposition. Nevertheless, it is crucial. The Department of State (DOS) is the agency responsible for development, administration and implementation of the BOA program and is actively coordinating participation by multiple agencies in the program, and in associated workshops and other activities. DOS has a long history of working with local governments and community partners on a variety of planning projects. Results to date indicate remarkable success in getting agencies out of their silos. This track record could be markedly improved if the DOS were statutorily empowered to play a coordinating role.²⁸

28. The GML section of the bill, S.8071, which was introduced in the NYS Senate in June 2010 provides for the empowerment of the NYS DOS to coordinate inter-agency cooperation to advance the multi-disciplinary economic development and community revitalization projects that comprise the BOA plans that are emerging in the 100 communities already participating in the BOA program.

The Obama Administration's Partnership for Sustainable Communities, with its place-based approach to funding and inter-agency coordination, provides an opportunity to advance federal-state-municipal-community collaboration around sustainable community renewal. There are very significant parallels between New York's BOA/Spotlight Communities Initiative and the Obama Administration's place-based approach. For instance, both initiatives:

- Focus on making government more flexible to meet the varied needs of communities by getting agencies out of their silos;
- Recognize the value of locally-driven, integrated solutions guided by coordinated government responses;
- Leverage investment by focusing resources in targeted places and drawing on the synergistic and compounding effect of collaboration;
- Focus on environmental protection, conservation and reducing pollution and the carbon footprint of communities;
- Recognize and value the community and are focused on integrated, flexible solutions to address complex problems.

The NYC Capacity Building Project – is a truly innovative coordination effort. Working with the city's Office of Environmental Remediation (OER), NPCR helped launch this cross-training initiative for community based organizations and City agencies involved in the BOA program. The concept was based on the recognition that while BOA is a state funded program, its effectiveness is directly impacted by the quality and quantity of participation by City agencies in both the preparation and implementation of BOA plans. Through the BOA program, 21 State grants have been made in communities across the City's five boroughs to advance area-wide brownfields planning and redevelopment.

While the State has provided a framework for the BOA planning process, many of the CBOs that have been awarded BOA grants do not have sufficient training, capacity, or experience to effectively engage and partner with City agencies. In addition, many of the City agencies are not as prepared as they could be to engage in the BOA process and support these community planning and redevelopment efforts. City agencies are generally not structured to engage with multiple community organizations in an ongoing and authoritative way that cuts across a variety of disciplines and a wide range of inter-related issues (e.g., housing, streets, parks, job generation, etc). This dual lack of expertise/capacity underscores the need for an ongoing, collaborative capacity building project.

The Capacity Building Project began in May 2010. Working with the OER, NPCR conducted outreach to identify gaps in knowledge and process among City agencies and BOA CBOs, and identified key topics for inclusion in capacity building workshops. The Project was officially launched at a formal kick-off meeting in the Blue Room at City Hall in June 2010. NPCR is currently working with OER, CBOs and city agencies to design and implement three capacity building workshops. The workshops are being held in the fall 2010 and winter 2011.

IV. Programmatic Preference and Priority to Achieve Implementation of the Area-Wide BOA Approach

Extraordinary partnerships have been created by the BOA investments made in communities that are developing area-wide plans. The area-wide approach is also raising expectations for the thousands of people who are participating in collaborative planning and visioning efforts. To support the

smart growth objectives that are reflected in these collaborative community plans, it is important that government resources be prioritized for projects that are built consistent with these plans. The 2003 Brownfields Law provides:

“To the extent authorized by law, projects in Brownfield Opportunity Areas designated pursuant to this section may receive a priority and preference when considered for financial assistance pursuant to any other state, federal or local law. GML S 970-R.5”

While the Law provides broad authority, it provides little in the way of specific benefits. As the BOA program matures there is growing recognition of the need to establish mechanisms, resources and programs to implement the emerging community plans. When a community sets out to plan for its future, it should know that government programs and funding criteria are structured so that resources will be program-matically available on a priority basis for projects that are built consistent with an authentic community plan. It is anticipated that programmatic criteria that reflects preference and priority for projects built consistent with an authentic community plan will likely result in a subtle, yet important, change in the community planning dynamic. Not only will it encourage wider and more enthusiastic participation in the community planning process by local developers and property owners, but it will also likely result in more cooperative and enthusiastic participation by local government agency representatives.

NPCR research has clarified that a meaningful ‘preference and priority’ policy cannot be achieved by making an adjustment to a single law or program. Rather, the goal must be achieved through an array of legislative, policy, program and administrative changes made to the specific programs that communities need in order to advance their area-wide plans. For example, this might involve securing changes in the competitive ranking criteria of an over-subscribed affordable housing subsidy program so that a housing project being built consistent with an authentic community plan would be ranked higher and therefore more likely to be awarded the government resources. Although the municipality may not adopt or support the community’s entire plan, a ‘preference and priority’ strategy allows for parts of the plan to move forward without full “plan adoption” by the local government. Moreover, in a ‘preference and priority’ approach, local leaders retain responsibility for implementing the community plan.

Current Programs that Provide for Preference and Priority - New York has begun to implement a number of preference and priority provisions for BOA projects, including a two percent brown-field tax credit bonus and priority for Environmental Protection Fund and for Restore NY funds. In May 2009, New York City passed landmark legislation that mandates priority and preference for brownfield projects it funds that are consistent with a BOA plan. But more is needed. Government funding at all levels that encourages — and does not undercut — sustainable community planning and implementation is crucial.

- **Environmental Protection Fund (EPF) & 1996 Clean Air Clean Water Bond Act** - The 2003 Brown-fields Law provided for preference and priority for resources in the EPF and the 1996 Clean Air Clean Water Bond Act: *“To the extent authorized by law, projects in Brownfield Opportunity Areas designated pursuant to this section shall receive a priority and preference when considered for financial assistance pursuant to articles fifty-four and fifty-six of the Environmental Conservation Law.”*

ARTICLE 54 - ENVIRONMENTAL PROTECTION FUND (EPF) - As the BOA program advances and BOA plans emerge, the Article 54 EPF resources represent an opportunity for targeted funding to achieve the communities’ priorities. For example, in instances where a BOA study area is located within a Local Waterfront Revitalization Plan (LWRP) boundary and a specific BOA project is

complementary with LWRP objectives, BOA projects will receive priority and preference from EPF LWRP. This is about to occur in waterfront locations throughout the state where 60% of BOA projects are located. Below is the list of Article 54 Environmental Protection Fund Programs, administered by the Office of Parks, Recreation and Historic Preservation (OPRHP), Department of Environmental Conservation (DEC), and the Department of State.

Open space land conservation projects (OPRHP)

- Open space land conservation projects in urban areas or metropolitan park projects
- Preparation of management plans for land acquired

Non-hazardous municipal landfill closure and gas management projects (DEC)

- Municipal owner or operator of a landfill toward the cost of a municipal landfill closure
- Municipal owner or operator of a landfill toward a landfill gas management project

Municipal waste reduction or recycling projects (DEC)

Park, recreation and historic preservation projects (OPRHP)

- Municipal park projects by a municipality or not-for-profit corporation for the planning, structural assessment, acquisition, development or improvement of recreational facilities
- Historic preservation project by a municipality or a not-for-profit corporation to acquire, improve, restore or rehabilitate property listed on the state or national registers.
- Heritage area project undertaken by or through a municipality, public benefit corporation or a not-for-profit corporation for the planning, structural assessment, acquisition and development of sites and facilities identified in an approved management plan.

Local waterfront revitalization plans and coastal

Rehabilitation projects (DOS)

- Local Waterfront Revitalization Program planning, studies, preparation of local laws, and construction projects
- Coastal rehabilitation projects for beach nourishment necessary to maintain the natural functions of beach areas undertaken by the state, a municipality, or a not-for-profit corporation

ARTICLE 56 - CLEAN WATER/CLEAN AIR BOND ACT - Unfortunately, there are no funds left for the programs created under this Bond Act. This is especially problematic for municipalities around the state who have received tremendous benefit from the Environmental Restoration Program, which was funded at \$200 million. A new source of funding must be found for that program, in particular.

SAFE DRINKING WATER PROJECTS for the capitalization of a drinking water revolving fund (EFC)

CLEAN WATER PROJECTS

- Management programs, plans and projects (EFC)
- Open space land conservation projects, in cooperation with willing sellers that develop, to expand or enhance water quality protection or public access to coastlines, aquifers, watersheds, lakes, rivers and streams (OPRHP)
- Park, historic preservation and heritage area projects (OPRHP)
- Payments to municipalities for the cost of dam safety projects (DEC)

- **Restore New York** – The Restore NY program, administered by Empire State Development (ESD) was created to encourage community development and neighborhood growth through the elimination and redevelopment of blighted structures. It provides funding to municipalities for projects involving the demolition, deconstruction, rehabilitation and/or reconstruction of vacant, abandoned, condemned and surplus properties. A \$300 million appropriation was enacted in the 2006-07 New York State Budget for the Restore New York program, and rolled out in three rounds:

- Round I: \$50 million appropriated in 2006; 54 grants awarded
- Round II \$100 million appropriated in 2008; 64 grants awarded
- Round III: \$150 million appropriated in 2009; 79 grants awarded

Priority is given to projects in Empire Zones and Brownfield Opportunity Areas. Rome and Broome County both received extra points on their Restore NY applications because the location of their project was in a BOA study area. The City of Rome leveraged over \$3 million in Restore NY funding for their BOA to create incentive packages for the rehabilitation of five strategic, catalyst properties. Wyandanch, in the Town of Babylon on Long Island, received \$80,000 from Restore NY for a BOA strategic site. The village of Johnson City received \$914,000 in Restore New York funds to demolish deteriorated commercial and mixed use buildings and catalyze the redevelopment and stabilization of priority sites within the Endicott Johnson Industrial Spine Brownfield Opportunity Area. Unfortunately, the Restore NY program has exhausted all new funding.

- **Upstate/ Downstate Revitalization ESD Funds** - Funding decisions by Empire State Development on applications for the Upstate Regional Blueprint and Downstate Revitalization Fund Programs, included 15 extra points for Sustainable Development (located in Brownfield Opportunity Area).²⁹ For example, the City of Buffalo was awarded \$2.4 million in ESD Regional Blueprint funding in October 2009 for construction of the North Canal Road in a commercial park in the South Buffalo BOA, one of the top ten priority projects in the South Buffalo BOA. This award followed the spring 2009 Spotlight Community Workshop held in Buffalo. Wyandanch, in the Town of Babylon on Long Island, also a Spotlight Community, received \$2 million from the ESD Downstate Fund for sewer line construction to serve the Wyandanch downtown.

- **BTC 2% bump up** – The 2008 amendments to the NYS Brownfields Law instituted a two percent increase to the Tangible Property Component of the credits for projects located in a BOA that are consistent with the “goals and priorities” of the designated BOA.³⁰ (See Section V for more details).

- **NYC BIG program** - In May 2009, the NYC Brownfields and Community Revitalization Act authorized the City to develop tools and resources to overcome the history of disinvestment and decay that has limited development in so many of New York City’s underserved neighborhoods. The law encourages new partnerships between city government, residents, property owners, local businesses, community organizations and neighborhood lenders. And it establishes the City as a fully engaged partner in the implementation of the state’s BOA program. In accordance with PlaNYC, the NYC Brownfields and Community Revitalization Act formally recognizes and prioritizes resources for projects built consistent with BOA plans, and will position City neighborhoods to successfully compete for state, federal and private sector resources, a critical step towards incentivizing comprehensive clean-ups and the development of community-supported projects.

29. <http://www.empire.state.ny.us/BusinessPrograms/UpstateDownstateFunds.html>

30. 2008 Sess. Laws of N.Y. Ch. 390§1

The NYC Brownfield Incentive Grants (BIG) program, created and administered by the Mayor's Office of Environmental Remediation offers a comprehensive and sophisticated program that provides grants for a wide range of activities, including: BOA program support, pre-development, investigation and remediation activities, and insurance. The program provides a track one cleanup bonus, a BOA strategic property bonus, technical assistance grants and a highly innovative BOA match grant. In total, the program provides up to \$140,000 in grants to BOA strategic sites that are enrolled in the LBCP. The rules also introduce the concept of "preferred community development projects" which include non-strategic sites within a BOA, affordable housing sites and community facility developments. These projects may receive up to \$130,000 in grants if enrolled in the LBCP. The same grant for non-preferred projects caps out at \$85,000. OER has also provided for much needed \$10,000 technical assistance (TA) grants for CBOs who want to apply to the BOA program and BOA program match grants of up to 10 percent of the BOA grant amount or \$25,000, whichever is lower. And, OER has developed the necessary program infrastructure to facilitate and streamline the use of such grants: a grant administrator, qualified vendor lists, and lists of eligible services and reimbursables. OER's financial incentive program provides thoughtful, targeted support for brownfield projects and, even more important, will foster equitable development by providing additional resources for community supported projects in low- and moderate-income communities.

V. Targeted Brownfield Tax Credits & an Accessible, Predictable Brownfield Cleanup Program are Crucial to Advance Area-wide Plans

The 2003 NYS Brownfields Law created the Brownfield Cleanup Program (BCP). Administered by the NYS Department of Environmental Conservation (NYSDEC), the BCP provides cleanup oversight and liability protection to site owners and developers who voluntarily undertake the investigation, cleanup and redevelopment of contaminated land in accordance with government rules and a signed agreement with NYSDEC. The Law was meant to encourage site owners and developers to voluntarily clean up brownfield sites by offering not just liability relief, but also certainty with respect to specific cleanup levels and regulatory process and significant financial incentives in the form of an assemblage of tax credits – the Brownfield Tax Credits – to encourage the redevelopment of brownfields sites over greenfields and properties that would not otherwise advance.

Unfortunately, the Brownfield Tax Credits (BTCs) have not been working as intended. Essentially, any site that enters the BCP generates BTCs as-of-right, regardless of public benefit, relative cost of cleanup compared to development, consistency with economic development objectives, or compatibility with a regional or municipal plan. Meanwhile, because the incentives are not targeted, the least marketable brownfield sites – due to location or level of contamination – continue to be ignored, effectively eliminating from the BTC program its intended use as a tool for urban and downtown revitalization.



Dilapidated building at 2 52nd Street, Brooklyn, New York

In his Environmental Agenda released in October 2010, Governor-elect Andrew Cuomo identified the BTCs as part of a wasteful and ineffective economic development apparatus in New York that needs reform if it is to support job creation, urban revitalization, smart growth and environmental justice.³¹ The report states, “*The BCP (which the document identifies as part of the Brownfield Tax Credit program), however, has yet to fully achieve desired redevelopment in struggling areas*” and in it is a pledge to “*find effective ways to streamline the BCP process and ensure that it is effectively used to help cleanup and redevelop those sites that need it most.*”³²

BTCs and the NYS Budget Crisis In July 2008, the Legislature capped the BTCs for development projects, (placing a per-project cap of the lesser of 3x the site preparation and groundwater remediation cost or \$35 million for non-manufacturing projects; or the lesser of 6x the site preparation and groundwater remediation cost or \$45 million for manufacturing uses.) Nevertheless, even with the caps, these still-generous development subsidies continue to be awarded regardless of whether or not a project needs subsidies. Moreover, the projected BTCs that will be claimed in 2010 exceed \$620 million.³³

Year	Total amount of all brownfield tax credits claimed by New York taxpayers per calendar year	Source
2008	\$190,032, 331	Brownfield Credit Report 2008, DTF ³⁴
2009	\$174,655,286	Brownfield Credit Report 2009, DTF ³⁵
2010	\$624,000,000 (projected)	Annual Report on New York State Tax Expenditures 2010-2011, DTF ³⁶

The BTCs place an open-ended burden on the State’s financial condition; the \$449,344,714 estimated increase in BTC claims from 2009 to 2010 represents a 388% increase in one year; and the brownfield tax credits represent a whopping 41% of all estimated business tax credits projected in 2010.³⁷ In the 2010-11 budget enacted in August 2010, the State deferred all business tax credits, including the BTCs, for taxpayers whose tax credit claims exceed \$2 million for each year in 2010, 2011 and 2012.³⁸ The large increase in claimed credits between 2009 and 2010 suggests a significant motivation for the deferral, as claims of \$624 million would have had an enormous impact on the State treasury.

31. *A Cleaner, Greener New York*; www.AndrewCuomo.com , p. 32

32. Ibid, pp. 32-33.

33. The state’s estimate of BTCs is based on several sources including verified and unverified tax claims, information from the NYS Department of Environmental Conservation including their experience with the rate of completion of cleanups in the BCP, anticipated timelines of projects in the BCP, and estimates from developers.

34. http://www.tax.state.ny.us/statistics/special_interest_reports/brownfield_credit/brownfield_credit_reports.htm

35. Ibid.

36. Annual Report on New York State Tax Expenditures 2010-2011, NYS Department of Taxation and Finance, p. 214.

37. Ibid, pp. 213-214. This 41% estimate was derived by dividing the projected amount of BTCs (\$624M) by the projected amount of all business tax credits (\$1.52B), \$624M/\$1.52B.

38. The NYS Department of Taxation and Finance estimates that New Yorkers will claim \$1.52 billion in business tax credits in 2010- this figure is the sum of business tax credit expenses provided in Annual Report on New York State Tax Expenditures 2010-2011, NYS Department of Taxation and Finance. The list of business tax credits is provided in the Temporary Deferral of Certain Tax Credits, TSB-M-10(5)C, (11)I, Office of Tax Policy Analysis, Taxpayer Guidance Division, New York State Department of Taxation and Finance, September 13, 2010.

NPCR’s analysis also includes the Empire State Film Production Credit, which is not included in the Deferral list.

New York State’s financial condition remains uncertain. According to the New York State Mid-Year Financial Plan Update (2010-11 through 2013-2014) budget gaps are projected to be \$9 billion in FY 2011-2012; \$14.6 billion in FY 2012-2013; and \$17.2 billion in FY 2013-2014. Net operating deficits in State Operating Funds are projected to be \$9.1 billion in 2011-2012, \$14.2 billion in 2012-2013, and \$16.9 billion in 2013-2014.³⁹ At the same time, state spending will increase over the same period, “General Fund spending is projected to grow at an average annual rate of 12.8 percent from 2009-10 through 2013-14.”⁴⁰

The NYS Division of Budget (DOB) projects a \$17.2 billion budget gap/\$16.9 billion net operating deficit in 2013-2014. It is in 2013 that the state will also have to begin making good on the tax credit claims deferred from 2010-2012, totaling an estimated \$2.91 billion, which is likely one reason for the huge projected gap.⁴¹

The challenge to the state of paying out cash for those tax credit obligations that are refundable, such as the BTCs, as part of an already huge budget gap will be enormous and provides a strong rationale for changing the underlying structure of the BTCs without further delay.

Moreover, the BTCs, which are among the richest in the country, have not resulted in the groundswell of applications and cleanups that should have accompanied such generous financial incentives.

Program Year	Number of Certificates of Completion issued by NYS DEC ⁴²
2005-2006	3
2006-2007	22
2007-2008	19
2008-2009	12
2009-2010	12
2010-2011 (as of late October 2010) ⁴³	8

BTCs and Economic Development – The brownfield tax credits have also proven to be ineffective in spurring redevelopment in communities hardest hit by decay and disinvestment.

Governor-elect Andrew Cuomo’s report, *“A Cleaner, Greener New York,”* concludes that, *“New York State spends vast sums on economic development. The problem is taxpayers don’t get enough bang for their buck because of the way economic development dollars are allocated. The main levers of New York’s economic development efforts have been the Empire Zone tax credit program, the Brownfields tax credit program (etc.)... inefficient and untargeted tax credits.”*⁴⁴

39. New York State Mid Year Financial Plan Update 2010-2011 through 2013-2014, Division of the Budget, pp. 23-24.

40. Ibid, p. 24.

41. New York State 2010-2011 Enacted Budget Financial Plan, Division of the Budget, p. 23.

42. Figures presented by Dale Desnoyers, NYSDEC at the New York State Brownfield Coalition Seminar, October 28, 2010.

43. According to DEC, 8 CoCs in 2010-11 is the highest number of CoCs issued at that point in the DEC program year which runs from April 1st to March 31st. Further, DEC receives approximately 2-3 applications per month to the BCP, averaging 30 per year. This is comparable to the number of applications received by DEC for the Voluntary Cleanup Program.

44. *The New NY Agenda: A Plan for Action*, www.AndrewCuomo.com, pp. 95-96

According to the DTF data summarized in the table below, the State paid out \$220 million in BTCs for tax years 2008 and 2009 to five projects. This means that 60% of the total amount of BTCs for the years 2008 and 2009 went to five projects.⁴⁵ Three of these projects are located in Manhattan, four are luxury residential projects and one project is for a Fortune 500 internet company.

The 5 projects that have generated the highest amount of brownfield tax credits since 2008

Amount Tangible Property BTCs ⁴⁶	Location/Acreage	Use ⁴⁷	Calendar year
\$110 million	White Plains, Westchester County	125 hotel rooms, 400 condominiums and approx. 10,000 sf feet of street level stores 2.6 acres	2008/2009
\$44 million	51st - 53rd St. & 10th Ave., Manhattan 1.48 acres	Two residential towers, a mixed-use low-rise building, public park, and subsurface parking garage (all currently under construction)	2008
\$24 million	10th Ave. between W.16th & W. 17th St., Manhattan 1.213 acres	A residential building is planned for the site	2009
\$21 million	Yonkers, Westchester County 4.45 acres	Hudson Park North - A 294-unit luxury apartment complex along the Hudson River	2009
\$21 million	11th Ave. & 18th St., Manhattan .68 acres	The famous IAC building in Chelsea, designed by Frank Gehry, HQ for IAC a leading internet company	2009
Total BTCs: \$220,000,000	Total Acreage: 10.42 acres		

This \$220 million state expenditure for five projects covering 10.42 acres can be contrasted with \$180 million of NYS Environmental Restoration Program (ERP) funding that has supported 131 remedial investigations, 44 remedial designs, 25 completed remedial actions and 34 interim remedial measures across the state.

45. It is worth noting that two of these projects could not earn the same amount on credits today because they exceed the \$35M/\$45M per project cap imposed in 2008.

46. Basic use information taken from the online Environmental Site Remediation Database, NYS Department of Environmental Conservation, <http://www.dec.ny.gov/chemical/8437.html>. Some supplemental information was acquired through subsequent internet searches.

47. Brownfield Credit Report 2008, DTF; and Brownfield Credit Report 2009, DTF.

ERP Remedial Project Starts/Completions as of March 31, 2010⁴⁸

Remedial Element	Starts SFY 2009/10	Starts Life to Date	Completions SFY 2009/10	Completions Life to Death
Remedial Investigation	7	219	13	131
Remedial Design	2	47	9	44
Remedial Action	8	46	0	25
Interim Remedial Measure	5	51	3	34

BTCs and Smart Growth - BTCs could be an effective tool for redeveloping urban and downtown areas and promoting Smart Growth development. The 2008 amendments to the NYS Brownfields Law instituted a 2% increase to the Tangible Property Component of the credits for projects located in a BOA that are consistent with the “goals and priorities” of the designated BOA. This bonus was intended to incentivize development consistent with BOA plans crafted by the local municipality and community. While the 2% bonus alone is unlikely to be an adequate incentive to attract a developer to a BOA, it should certainly encourage a developer to pay attention to the BOA planning process because for the first time it will be in the developer’s financial interest to more closely align his/her development project with the BOA plan. Particularly because of the tough real estate market and credit crunch, local planning through the BOA program needs a more robust tax incentive to entice developers and promote the economic and environmental efficiencies of building in New York’s neediest downtown/urban areas. Among other advantages, increasing the current 2% bonus will enhance the state’s smart growth efforts and increase the effectiveness of the state’s resources to achieve local economic development goals. These important incentives for downtown revitalization and economic development will be further strengthened if a larger portion of the BTCs are set aside for projects in a BOA and if eligibility for BTCs is reserved only for those projects that are not inconsistent with a BOA plan.

The current brownfield tax credit scheme offers an extra 8% in tax benefits for sites in En-Zones. While the percentage clearly shows a preference for targeting BTCs, En-Zones may not be a good vehicle for targeting. En-Zones tend to comprise fairly large swaths of land, particularly in upstate cities where the poverty and unemployment statistics are skewed because of the high proportions of old industrial lands that have no significant population. The En-Zones alone do not provide a precise enough instrument for targeting the State’s economic development largesse. Nor does the existing tax credit formula contemplate the value of a particular development project to the community – whether, for example, it will contribute to the community’s economic viability or quality of life – or whether it is even welcome in that community.

48. Environmental Remediation 2009/10 Annual Report, NYS Department of Environmental Conservation, p. 15

49. 2008 Sess. Laws of N.Y. Ch. 390§1

It is time for new solutions that recognize that Brownfield Tax Credits can and should play an important role in the State's economic and environmental policy, while also recognizing the flawed and unsustainable structure of the brownfield tax credits as currently designed. With the August 2010 BTC deferral significantly reducing the usefulness of the BTCs as a stimulant for economic development; and the looming billion dollar BTC bill that will come due starting in 2013, it is urgent that the BTCs be re-structured without further delay.



NPCR 2009 Forum discussion on BTC revisions. L to R: Gary Hallock, NYSDHCR; Val Washington, NYSDEC; Eric Bluestone, the Bluestone Organization; and Lucille McEwen, HCCI.

NPCR's 5-Pronged Solution

#1. Separate Cleanup (Site Preparation) BTCs from Development (Tangible) BTCs, while maintaining the as-of-right nature of the Cleanup BTCs, and clarifying the basis for BTC generation.

- The way in which site preparation BTCs are currently calculated allows for the inclusion of costs that may be unrelated to the cleanup (e.g., excavation to build a foundation not connected with a cleanup remedy). Because the amount of tangible property BTCs are a multiple of the site preparation costs, this has created incentives to inflate costs.
- The statute should clarify that the basis for generating site preparation BTCs is limited to the costs associated with the Brownfield Cleanup Agreement (BCA). To increase predictability, transparency and fiscal responsibility, the NYSDEC should be required to conduct a rule-making to clarify the key elements and basis for generating site preparation BTCs.
- To advance the State's smart growth objectives, the State should provide more generous site preparation BTCs to help pay for the cleanup of contamination on sites which are being built consistent with smart growth plans developed by the local community through the Brownfield Opportunity Areas (BOA) program.
- Although the 2003 Brownfields Law calls for resources to be directed on a "preference and priority" basis to BOA projects, few resources are available. It is crucial that the link between BTCs and BOAs remain. The 2% tangible property BTC bonus for projects built consistent with a BOA plan should be increased and should be transferred to site preparation BTCs.

#2. Separate Eligibility for the Tangible Property Brownfield Tax Credits (BTCs) from Eligibility for the Brownfield Cleanup Program (BCP); and tangible property BTCs should no longer be awarded to projects just because they gain entrance into the BCP.

- Because BTCs have been awarded as-of-right to all projects accepted into the BCP, the State has been forced to subsidize developments that may not need subsidies and which may not be consistent with the State's or the local community's plans and priorities.
- All projects, including historic fill sites, seeking regulatory oversight should be eligible for the BCP and eligibility determinations must be made expeditiously, in accordance with statutory deadlines.

#3. Replace the Open-Ended Tangible Property BTCs with an Automatic Annual Program Cap.

- Institute a statutory annual programmatic cap on the amount of BTCs that may be awarded in any fiscal year. This will stop the unquantifiable drain on the state's budget while avoiding annual budget battles.

- The statute should establish the amount of tangible property BTCs that will be allocated annually, specifying that half are for housing; and half for job-generating enterprises.
- Generous subsidies are needed to make the redevelopment of brownfield sites as attractive as greenfield sites, but resources need to be targeted to projects which would not otherwise advance. And, an appropriate per project cap on the BTCs should be maintained.
- In recognition of the downturn in the syndication tax credit market, the existing refundable nature of the BTCs should be maintained.

#4. Rely on the State's Existing Infrastructure to efficiently deliver the Tangible Property Brownfield Tax Credits.

- The NYS Division of Housing and Community Renewal (DHCR) and NYS Empire State Development (ESD) should each be responsible for allocating a dedicated portion of the tangible property BTCs to specific projects, reflecting the State's development priorities. These agencies are already channeling state and federal resources into projects to achieve state and local development objectives. Making these agencies responsible for the BTCs will allow the use of the state's existing infrastructure and also encourage better coordination with other resources.
- DHCR and ESD should be the agencies responsible for making allocations of tangible property BTCs to specific projects. Such awards should be made prior to a developer securing acceptance into the BCP, however awards of tangible property BTCs should be contingent upon DEC acceptance of the project into the BCP and issuance of a Certificate of Completion and a Certificate of Occupancy. Expiration of the tangible property BTCs should be linked to the DEC approval process and the developer's anticipated construction schedule.
- Those developers that receive a tangible property BTC allocation should be provided with a firm, written commitment by the state for a specified amount of tangible property BTCs upon which they can rely, and which they can literally "take to the bank" to secure bridge financing for their project.
- The basis upon which the maximum amount of tangible property BTCs are generated should remain the same, i.e., the total development cost, but DHCR and ESD should be empowered to allocate fewer credits than the maximum, depending on competition, need and other criteria (*see #5 below*).
- Once the annual BTC programmatic cap has been reached, new projects would have to wait for the next competition to apply for a tangible property BTC allocation.
- Adequate resources for staff at both development agencies should be appropriated to ensure that the program is run efficiently and effectively.

#5. Establish Objective, Transparent Criteria for Project-Specific Tangible Property BTC Allocations and use BTCs to advance the State's Smart Growth Objectives.

- Both DHCR and ESD should be required to make BTC allocations based on competitive, clearly established, objective and transparent criteria and the BTCs should be allocated seamlessly with other development subsidies administered by the agencies. Such criteria should include preference and priority for projects built consistent with a BOA plan.
- A percentage of all BTCs should be set-aside for projects built consistent with a BOA plan; and no tangible property BTCs should be awarded to projects which are inconsistent with an approved BOA plan.

- Criteria for the annual competition for BTC allocations should include, but not be limited to: population density and recent population loss, number of brownfield sites in the area, poverty, blight, unemployment and other relevant demographics. Other criteria for ESD should include:
 - The projected property tax and sales tax revenues that will be generated by the enterprise, to the extent that these projections are indirectly linked to commercial and industrial job generation;
 - A financial gap analysis of the project which is focused particularly on the land value;
 - The amount of time that the site has been vacant or under-utilized;
 - An evaluation of the extent to which the project will create well-paid, career track jobs that contribute directly to preserving or enhancing environmental quality;
 - Priority for redevelopments using green building, LEED certified construction standards; and
 - Priority for redevelopments for green manufacturing enterprises.

Legislative Background on the BTCs - In October 2003, New York State adopted legislation intended to promote the remediation and redevelopment of brownfield sites (the “Brownfield Law”).⁵⁰ As part of the legislation, the New York Tax Law (the “Tax Law”) was amended to add a new set of tax credits applicable to the remediation and development of brownfields.⁵¹ The Brownfield Law created three distinct credits: a Brownfield Redevelopment Tax Credit⁵² (the “Brownfield Tax Credit” or the “BTC” comprised of a Site Preparation Cost credit, an On-site Groundwater Remediation Credit and a Tangible Property Credit); a Remediated Brownfield Credit for Real Property Taxes⁵³; and an Environmental Remediation Insurance Credit⁵⁴. In June 2008, New York State adopted a number of revisions to the Brownfield Law (the “2008 Amendment”)⁵⁵ which were intended to address certain shortcomings of the BTC portion of the Brownfield Law, most notably the excessive generation of Tangible Property credits. By far the most significant changes made to the 2008 Amendment were the modification of the BTC to i) increase the applicable percentage credit for remediation expenses, ii) establish a cap on the amount of credits generated for development costs on a per site basis and iii) create a statutory link between the BTC and the Brownfield Opportunity Area (“BOA”) program through a 2% BTC bonus for projects built consistent with a BOA plan. In August 2010, the state enacted a budget for fiscal year 2010-2011 that included a deferral of all business tax credits, including brownfield tax credits, which exceed \$2 million for any individual or corporate tax payer for the tax years 2010-2012. Taxpayers may claim these deferred tax credits in 2013 and the state will phase in the refunding brownfield tax credits beginning in 2013.⁵⁶ The table below summarizes the various elements of the BTCs.

50. L.2003, c. 1. The law was the subject of technical amendments adopted as L.2004 c. 577 and was further amended by L.2006 c. 420

51. L.2003, c.1. Tax Law §21, 22 and 23

52. Tax Law §21

53. Tax Law §22

54. Tax Law §23

55. 2008 Sess. Laws of N.Y. Ch. 390

56. *Temporary Deferral of Certain Tax Credits*, Office of Tax Policy Analysis Taxpayer Guidance Division, New York State Department of Taxation and Finance, September 13, 2010

Applicable Percentages, Timing, and Caps for the BTC – Before the August 2010 Cap/Deferral

Credit Component	Applicable Percentage	Caps on Credits	Timing of Credit Eligibility
Site Preparation Costs	Unrestricted Use: 50% Residential Use: 40% (28% for track 4) Commercial Use: 33% (25% for track 4) Industrial Use: 27% (22% for track 4)	None	Credits for eligible costs required for issuance of the CoC must be claimed in the year of issuance of the CoC The remainder of the credits must be taken when the improvement is placed in service, which is when the property is ready for use for its intended purposes (generally upon issuance of a certificate of occupancy).
On-Site Groundwater Remediation Costs	Same as Above	None	Same as above
Tangible Property	Corporations: 12% Individuals: 10% *Bonus for En-Zone: 8% Bonus for track 1: 2% Bonus for BOA: 2% * The expanded En-Zone created by amendment in 2004 will be eligible for the bonus only for sites with a BCA prior to 9/1/10	Non-Manufacturing Uses (e.g., residential & commercial) - capped at the lesser of three times the amount of the Site Preparation and On-Site Groundwater costs or \$35 million. Manufacturing Use - capped at the lesser of six times the amount of the Site Preparation and On-Site Groundwater costs or \$45 million.	Credits must be taken only in the year the property is placed in service; and are available for any improvements made within 10 taxable years after the date of the issuance of the certificate of completion. ⁵⁷ Credits will be forfeited if the project is placed in service in a year prior to the year in which the CoC is issued.

57. The original statute's requirement that the project be placed in service within three years of issuance of the CoC was removed by amendment in 2004

VI. Environmental Insurance: A potentially valuable tool to advance the redevelopment of brownfield sites

The presence of contamination creates risks and uncertainties due to the potential for significant remediation cost overruns, liabilities from exposure to contaminants, delays associated with regulatory oversight, etc. Environmental insurance is a risk transfer mechanism that has been used successfully by the private marketplace and could be valuable on profit-capped projects that have little room for unexpected cost increases. Unfortunately, insurance carriers have become increasingly reluctant to provide cost-effective policies for remediation cost overruns on cleanups under \$5 million dollars, such as those typical for NYC brownfield sites.



This gap led NPCR to undertake an evaluation of the problems and potential solutions to making environmental insurance more available for public purpose projects in NYC. In early 2008, with the help of Howard Tollin,⁵⁸ a well-regarded environmental insurance broker with the firm AON, NPCR focused particularly on cleanup cost cap and pollution liability policies. In November 2008, after interviewing a broad range of stakeholders, NPCR released the report, *Addressing The Risk: Making Environmental Insurance Available For Brownfield Sites In NYC.*⁵⁹ In 2009, NPCR tested whether the conclusions of the 2008 report remained valid and, again in concert with Howard Tollin of AON, conducted follow-up interviews to determine whether the market for environmental insurance had changed either as a result of external forces such as the housing market collapse or internal forces such as corporate reevaluations. NPCR released its first update in November 2009.⁶⁰ Having noted some changes in the CCC and PL markets in 2009, NPCR and Mr. Tollin did a brief survey in 2010 to reassess their status. This section of the report reflects a snapshot of the environmental insurance market in late 2010 and builds on the 2008 and 2009 work.

Overview of the Environmental Insurance Marketplace - In the mid to late 1990s, insurance carriers started writing environmental insurance policies specifically to address the risks posed by acquiring, remediating and developing and/or lending on a contaminated piece of property and developed three basic products for covering environmental risks: Cleanup Cost Cap (CCC), Pollution Liability (PL) and Secured Lender policies. Since then, the market for and availability of environmental insurance has changed considerably. As early as 2000, carriers were responding to more and larger claims than expected, especially on CCC, and in a trend that has continued, carriers have dropped out of the market, or reduced business and changed underwriting policies.⁶¹ At the same time that the availability of CCC policies has declined, new products such as guaranteed fixed price remediation products have evolved, some of which provide cost-effective coverage for cleanups starting at \$2 million. Similarly, the number of PL policies being written has increased.

Cleanup Cost Cap (CCC) Policies - CCC policies provide a narrow range of coverage and are only for unanticipated cost increases incurred during implementation of an approved remedial plan (approved by either a regulator or an insurance carrier). These policies are best suited to construction lenders or developers who, once the site is remediated, will transfer the property to another party.

58. Howard Tollin, Managing Director, Environmental Services Group Aon Risk Solutions, Aon Risk Services Northeast, Inc. 390 North Broadway Jericho, NY 11753, tel: (516) 396-4331 email: howard.tollin@aon.com

59. Available at www.npcr.net

60. Ibid

61. Waeger, Ann M, 2006. Current Insurance Policies for Insuring Against Environmental Risks, available at: <http://www.brownfieldsinsurance.org/en/Articles.aspx>

Typically, the covered unanticipated remediation costs can be broadly described as the result of one of the following:

- Discovery of unidentified contamination during implementation of an approved scope of work (discovery of unknown contamination could be covered under a PL policy);
- A greater than expected volume of contamination;
- A longer than expected duration for remediation;
- A change in site-specific regulatory requirements; or
- A remediation technology failure.

The minimum cost effective CCC policy on the market is generally offered for remediation projects starting at \$5 million (with the exception of some specialized products) and the policy term is typically two to three years (*see table*). The amount of coverage is normally 100% of the estimated cleanup costs, and premiums cost between 13 and 21% of the covered amount. Higher premiums are generally charged for smaller cleanups. Premiums typically start at \$200,000 to \$350,000 which makes insuring \$1 million cleanup projects cost prohibitive. There is one CCC policy for smaller cleanups that can be completed within three years and for which the remediation costs are in the \$1 million to \$2 million range. However, the projects must meet strict eligibility requirements (i.e., contiguous properties less than 10 acres in size with a new site use), the site conditions must be well characterized and the policy terms (number of years, premiums, exclusions) are non-negotiable.

Environmental insurance carriers require a Phase I, a Phase II and a remedial plan and cost estimate prepared by a consultant and prefer to underwrite a remediation plan that has been approved by a government regulatory agency. Carriers vary as to whether they charge an underwriting fee for a CCC policy, and that fee can range from \$10,000 to \$20,000 depending on the size of the site and the complexity of the remediation. Each carrier uses its own internal team of engineers to perform a detailed evaluation of the remedy and the remedial costs, this evaluation typically leads to a 10 to 30% increase in project costs and the new, higher, remedial cost estimate generally becomes the attachment point also known as the self-insured retention (SIR). All carriers require some type of co-payment by the insured for remediation costs in excess of the SIR on the basis of a percentage of the costs agreed to upfront and specified in the policy. The co-payment is considered an important tool in aligning the interests of the insurer and insured to control future costs.

Observations about changes in the writing of CCC policies include:

- Pre-2000, many carriers were providing a cost-effective CCC policy for cleanups in the \$1 million range, after that time, premiums began to increase such that CCC policies were only cost-effective for larger cleanups.
- The number of CCC policies that are bound (negotiated and executed by a carrier and a property owner/developer) has continued to decline over the last several years. Of the three carriers interviewed in 2008, one carrier has stopped providing traditional CCC insurance altogether and the two carriers that continue to provide CCC for cleanups under \$10 million have only written a few policies. A new entrant to the environmental insurance market has indicated that the company will not provide CCC.
- For those few policies written, CCC policy coverage and costs have not changed substantially over the last several years. Underwriting of the policies continues to be stringent with carriers emphasizing that company policy requires they do their own internal underwriting in accordance with specific company guidelines.

Pollution Liability Policies – Although PL policies do not provide protection against cleanup cost overruns, they do provide broader coverage relating to environmental conditions than CCC policies. That coverage includes:

- Third party claims for bodily injury;
- Property damage;
- Natural resource damages;
- Legal defense costs; and
- Coverage for cleanup costs arising from unknown conditions (although there is an exclusion for known pollution conditions that remains in place until those conditions are remediated) and in some cases statutory changes in standards.

PL policies are most often purchased by property owners/managers who are concerned about the long-term liabilities associated with their property. There is a wide range in policy costs because PL policies are used in many different types of transactions. For small NYC brownfield sites (a half acre or smaller), a PL policy might cost between \$50,000 and \$100,000 and provide up to \$10 million in coverage with an average deductible of \$100,000.⁶² PL policy periods range from 1 to 10 years, but because of overall cost, many insureds purchase policies with between 3 and 5 years of coverage.⁶³ Some carriers offer an option to purchase an extended reporting period (ERP) for up to four years but the premium for these ERP policies may be double the original premium.⁶⁴ Carriers require a Phase I, and depending on the Phase I results and whether the proposed future land use requires subgrade work, may require a Phase II (*see table*).

PL policies are used more frequently in contaminated property transactions than CCC policies because PL policies provide broader coverage (and in particular coverage for third party defense costs), and are less expensive and easier to obtain. However, on sites that require remediation, the PL policy exclusion for known pollution conditions often motivates owners to purchase a CCC policy simultaneously. The CCC policy provides coverage for cost overruns during remediation; and after the cleanup activities are complete, the PL policy provides coverage for subsequent cleanup costs arising from unknown conditions.

Observations of changes in the writing of PL policies over the last several years include:

- New carriers have entered the PL market and there are more carriers in 2010 than in 2008 providing PL policies for owners/developers and contractors.
- PL policy coverage costs have declined and coverage terms have become broader. The increase in the capacity in the PL market has led to more competition and a decline in costs.
- PL policies continue to require careful manuscripting to ensure that the developer/owner gets the most inclusive/protective policy possible.
- The importance of adequate site characterization continues to be a recurring theme among the carriers and several noted that the better the site characterization, the stronger the policy and the lower the cost.

62. EPA, Sustainable Management Approaches and Revitalization Tools- electronic (SMARTE), available at: <http://www.smart.org/smart/resources/sn-liability.xml?page=5>

63. Yount, Kristen and Peter Mayer, 2005. Environmental Insurance Products Available for Brownfields Redevelopment, available at <http://www.brownfieldinsurance.org/en/reports.aspx>

64. Ibid

Consultants/Guaranteed Fixed Price Remediation Contracts - A guaranteed fixed price remediation (GFPR) contract generally involves three parties: a consultant, a client and an insurance carrier. The consultant provides the client with a guaranteed cost to remediate a site (that is generally accompanied by a number of caveats or exclusions) and then the consultant obtains both a PL and a CCC policy from an insurance carrier. The PL policy protects the client against third party claims and the costs of managing unknowns and the CCC policy protects the consultant against cleanup cost overruns. Carriers prefer to write their CCC policies to a consultant or a contractor because it more closely aligns the interests of the consultant and the insurance company, which ideally, will save money and prevent overruns. Some policies are even written with performance bonuses for the consultants as an added incentive. While carriers prefer writing a CCC policy for a consultant with a GFPR contract to writing a CCC policy for the developer/owner, the GFPR contracts can still be time-consuming and expensive to obtain.

GFPR contracts vary from consulting firm to consulting firm. While some firms focus on smaller remediation projects costing between \$1 million and \$5 million, firms often prefer to write GFPR contracts for projects over \$5 million because these contracts require detailed site information and are therefore time-consuming to develop and negotiate. Each firm that offers GFPR contracts conducts its own internal review process, which takes from 30 to 60 days for smaller projects and up to three months for larger projects and the results become a critical component of the guarantee.

Some firms charge for their underwriting, which can cost up to \$75,000 on large projects. And if firms do not think there is enough site-specific data with which to accurately assess site conditions, they will, at the client's expense, conduct additional investigative work. After the consulting firm completes its evaluation, it will submit the site information to a carrier who will conduct its own separate underwriting evaluation in order to provide the CCC policy to the consultant. Once the insurance underwriting is complete, the consulting firm will issue a GFPR contract and a list of exclusions to the client (the developer or owner).

GFPR contracts frequently have exclusions for activities that are less likely to result in cost overruns such as government oversight and asbestos remediation as well as items associated with construction such as sub slab venting systems (i.e., subsurface piping systems constructed to mitigate the impacts of soil vapor). One reason for these exclusions is to keep premium costs low. Some carriers also require exclusions on remedial tasks that are more difficult to quantify, for example, some carriers will cap the volume of soil that can be remediated and/or the cost per ton for soil disposal under the policy to avoid having to cover the cost overruns that have frequently been associated with soil excavation cleanup remedies.

Observations of changes in GFPR contracts policies include:

- The availability of specialized GFPR contracts (essentially CCC policies for small, profit-capped projects) has declined. In 2008, NPCR reported that there were three such products and now there are only two.

Subsidies for Environmental Insurance - The structure of environmental insurance lends itself to using public subsidies and these subsidies could translate into reduced costs making such policies more readily available. On that basis, NPCR issued a series of recommendations aimed at increasing the availability, accessibility and usability of environmental insurance to advance brownfields redevelopment projects in NYC:

- **Subsidize the CCC policy premium** - The policy premium is the simplest element of the policy to subsidize. This type of subsidy could be effective in inducing carriers to provide CCC policies for smaller cleanups (in the \$1 million to \$2 million range), by allowing them to charge a higher premium. However, premium subsidies must be committed and spent upfront in the project with no opportunity to recoup the costs after the project is complete.
- **Subsidize policy underwriting costs** - Carriers incur and often pass on substantial underwriting costs. These costs as well as the finite underwriting capacity of some carriers induces carriers to carefully screen and sometimes reject applications prior to underwriting. Subsidizing the carrier's underwriting costs signals to the carrier that the customer is serious about obtaining a policy. Further discussions with the carriers would be needed to determine a mechanism for these subsidies as well as the magnitude of the possible reduction in policy costs.
- **Subsidize PL Policy Premiums** - PL policies are frequently used in contaminated property transactions because they provide broader coverage, including protection against third party claims and legal defense costs as well as coverage for unknowns that arise after the remediation is complete. As a result, not only is this policy beneficial for the owner but it can make permanent lenders more comfortable with the deal. Subsidizing the premium would make PL policies more available and enable some developers to procure longer-term policies.
- **Subsidize deductibles on short-term PL policies** - PL deductibles can range from \$25,000 to \$100,000 and are due at the time the costs are incurred. Subsidizing the deductible would make these policies more affordable. However, subsidies for PL policies with 1 to 3 year terms may need a cap on the number and magnitude of the incidents that can be covered. Committing subsidies for deductibles on long-term PL policies could take public dollars out of circulation without any discernible short-term benefit.
- **Create and subsidize an additional buffer between the SIR and the insurance policy** - A subsidy could be used to create an additional buffer layer above the Self Insurance Retention ("SIR" or the deductible). From the perspective of the insurance carrier, this effectively increases the amount of the SIR because in the event of cost overruns, both the SIR and the buffer would be accessed before the carrier's money. Such a buffer layer would reduce the carrier's risk and may induce the carrier to reduce the premium and increase the flexibility of the policy terms. Additionally, this structure could be sustainable because, while the subsidy dollars must be committed upfront, they will not necessarily be spent. Therefore, once the policy period is over, the money will be available for other projects.

In 2009, NPCR successfully worked on incorporating funds for insurance into the Proposed Clean Water, Clean Air and Green Jobs Bond Act of 2009 (the Bond Act). Proponents of the proposed Bond Act supported including \$100 million for a Smart Growth Brownfields Environmental Insurance Pool that would allow the private environmental insurance market to function in many low- and moderate-income communities. Funds in the pool would be set-aside on a site-specific basis to fund two types of subsidies: 1) for a buffer layer that would be accessed before the insurance policy and 2) for policy premiums. Unfortunately, while the Bond Act made it from the Assembly's Environmental Conservation Committee to Assembly Ways and Means, it made it no further in 2009. However, there are still those who continue to believe that, in a time of limited resources, bond act type investments are a way to stimulate the state's economy and provide a source of funds for important revitalization and public health investments.

On June 21, 2010, the NYC Mayor's Office of Environmental Remediation launched the Brownfield Incentive Grant (BIG) program. Among the financial incentives offered to parties that enroll in the NYC Local Brownfield Cleanup Program are cleanup grants and environmental insurance

grants of up to \$60,000 for qualifying brownfield properties and up to \$100,000 for Preferred Community Development Projects. The environmental insurance grants can be used towards the purchase of either PL or CCC policies.⁶⁵

New York State also offers tax credits that can be used for environmental insurance on projects that enroll in the NYS Brownfield Cleanup Program. The environmental remediation insurance credit is available to taxpayers who have received a Certificate of Completion from NYSDEC and pay eligible premiums for a qualified brownfield site.⁶⁶

The amount of the credit is the lesser of \$30,000, or 50% of the eligible premiums paid by the taxpayer on or after the date of execution of the BCA.⁶⁷ However, the tax law governing the brownfield tax credits, including the environmental insurance credits, was recently amended and effective for tax years beginning January 1, 2010, and before January 1, 2013, projects with credits that exceed \$2 million, will be subject to a temporary deferral (see report section on Brownfield Tax Credits for more details). Taxpayers will be allowed to claim the deferred tax credit amounts starting with tax years beginning on or after January 1, 2013. No interest will be paid on the deferred tax credit amounts.⁶⁸

Conclusions - Environmental insurance products have changed and are continuing to change in response to the market and the economy: fewer carriers are providing CCC policies while more are providing PL policies. Nonetheless, the recommendations from NPCR's 2008 report remain relevant. Government could play a role in enhancing the use of environmental insurance as an effective tool to advance brownfield redevelopment projects, particularly in low- and moderate-income communities that are disproportionately impacted by brownfield sites:

1. Government subsidies for CCC policies would increase their availability and cost-effectiveness for profit-capped sites, specifically subsidies for: (i) a buffer above the Self-Insured Retention, (ii) the CCC policy premium, and (iii) for policy underwriting costs.
2. Government subsidies for PL policies would increase their availability for profit-capped projects - specifically subsidies for (i) PL policy premiums and (ii) deductibles on short-term PL policies.
3. Government subsidies for specialized insurance products designed for cleanups under \$3 MM warrant further evaluation.
4. Training and technical assistance is needed to assist profit-capped project developers in understanding the types, benefits and costs of insurance as well as the time and process for procuring policies,
5. The feasibility and value of developing specialized environmental insurance products for gas stations and dry cleaners in NYC should be explored.
6. Time that the availability of CCC policies has declined, new products such as guaranteed fixed price remediation products have evolved, some of which provide cost-effective coverage for cleanups starting at \$2 million. Similarly, the number of PL policies being written has increased. Adequate site investigation remains a critical part of controlling the risks associated with redeveloping contaminated sites and for securing protective CCC and PL policies.

65. More detailed information about the environmental insurance grants and the BIG program can be found at <http://www.ci.nyc.ny.us/html/oer/html/big/big.shtml>

66. For more information on the NYS Brownfields Tax Credits, see NPCR's *Analysis on the Use of Brownfield Tax Credits by Not-for-Profit Organizations*, February 2009 at www.npcr.net

67. New York State Department of Taxation and Finance, *New York State Tax Credits Available for Remediated Brownfield Sites*, Publication 300, April, 2010, available at http://www.tax.state.ny.us/pubs_and_bulls/memos/corporation_memos.htm

68. New York State Department of Taxation and Finance, *Temporary Deferral of Certain Tax Credits*, September 13, 2010 available at http://www.tax.state.ny.us/pubs_and_bulls/memos/corporation_memos.htm

ENVIRONMENTAL INSURANCE TABLE

SUMMARY OF CHARACTERISTICS OF CCC AND PL POLICIES

Required site information (Database search, Phase I, Phase II, RAWP, regulatory sign-off)	Carriers want as much information as possible about historical operations and environmental conditions; they need a Phase I and Phase II, a Remedial Plan, costs and schedule and preferably a regulatory sign-off on the remedy.	Carriers want as much information as possible about historical operations, environmental conditions and past claims. They typically request a Phase I and a Phase II and the better the information, the better and more cost-effective the insurance policy. However, depending on site conditions, some policies may be issued without a Phase I or II report.
Minimum policy limits	Specialized product policy limit: \$1 MM Non-specialized CCC policy limits: \$5 MM	\$10 MM to \$15 MM for a “typical” NYC brownfield site.
Policy Term	2 to 3 years	5 to 10 years
Average premium for minimum policy	13 to 21% rate on line with minimum premiums ranging from \$200K to \$350K depending on policy.	A \$10 to 15MM policy for 5 to 10 years ranges from \$50K to 200K depending on the carrier.
Co-payment provision	Co-payment required by all carriers; percentage can vary from 10 to 30%. Higher co-payments can be used to reduce the premium.	Not applicable
Self-Insured Retention (SIR)	Usually set at the carriers estimate for remediation which may be 10 to 30% higher than the developer’s original estimate.	Not applicable
Underwriting Process	Carrier’s internal team of engineers will perform a detailed evaluation of the remedy and the remedial cost estimate; evaluation often leads to increasing the original cost estimate by 10 to 30%.	Each carrier conducts it’s own internal underwriting and starts with a standard form that is then carefully modified to reflect site-specific conditions. Since policies cover unknowns, carriers carefully list some or all known conditions as exclusions based on the results of their underwriting.
Use of pre-approved consulting firms	No pre-approved firms but carriers will look at consulting firm’s track records on other clean-ups.	Not applicable
Interest in policies for Guaranteed Fixed Price Remediation (GFPR) contracts	Some preference for writing GFPR policies (which are essentially CCC policies for a consultant) but will write CCC policies for both consultants and owners/developers.	Not applicable
Preference for particular remedies (excavation versus in-situ technologies)	No preference for particular remedies- key is that site data (e.g., types of contaminants) and end use are consistent with selected remedy.	Not applicable
Number of policies provided/declined on annual basis	50 to 90% declination rate related to a number of factors such as long lead-time on projects, mid-deal collapses, and insufficient site data.	This was a more difficult question for the PL carriers to answer, some said some kind of policy could almost always be developed, several said they were writing fewer policies than last year and one carrier said they were writing more policies than last year.
Interest in relying on third party underwriting	Carriers had very little interest in third party underwriting although they thought that a third party could provide some assistance by packaging applications, which could increase the efficiency of their underwriting process.	Carriers had very little interest- company guidelines require internal evaluations.
Interest in use of public subsidies	Some interest in use of subsidies, but carriers unwilling to accept less than \$200K in premiums, which could limit the effectiveness of the subsidy.	Some interest- but subsidizing PL policy premiums or deductibles does not affect carriers.

An important consideration in developing any subsidy program is that carriers consider environmental risks to be highly site-specific making programmatic approaches to increasing the availability of CCC somewhat difficult. However, carriers continue to be interested in discussing and writing CCC policies for specific sites and so there is an opportunity to cooperatively evaluate specific sites and possibly pilot programs that might lead to more programmatic approaches to increasing the availability of insurance.

VII. Other tools for area-wide plan implementation

There is a relatively empty toolbox with which to advance area-wide plans. New, flexible tools for area-wide plan implementation are needed. Some recent advances and potential new tools on the horizon include:

- **The Local Brownfield Cleanup Program (LBCP)** - is an innovative local tool with the potential to save the State money and expedite economic development projects. In April 2007, New York City introduced PlaNYC 2030 and took unprecedented steps towards municipal brownfield cleanup management.⁶⁹ PlaNYC identified approximately 7,600 acres of brownfields in New York City's five boroughs and recognized the opportunities that these sites provided for neighborhood revitalization, increases in housing stock, open space, job creation and additional City revenue. In accordance with PlaNYC, and in partnership with the New York City Council, the New York City Brownfield and Community Revitalization Act was passed, authorizing the establishment of the New York City Local Brownfield Cleanup Program (LBCP).⁷⁰ The LBCP was officially launched on August 5, 2010 and is the first municipally-run brownfield cleanup program in the nation.⁷¹ This program, on its own and through its significant support of and partnership with the NYS Brownfield Opportunity Areas (BOA) program, supports an area-wide, collaborative approach to the planning, cleanup and re-use of the City's brownfield sites. It also provides a streamlined program for site investigation and remediation and financial incentives to encourage the redevelopment of NYC brownfield sites. And, by providing municipal resources to oversee cleanups, the program comes at a critical time when state resources for regulatory oversight have been significantly reduced.

Cleanups Standards - The rules governing the NYC LBCP are based on the clean-up standards and engineering and institutional controls developed by the NYSDEC for the state Brownfield Cleanup Program and as such provide for cleanups that should be as protective as the State program. The LBCP goes beyond the State program in its community outreach and community protection requirements. OER has also made significant efforts to develop a streamlined program that will encourage redevelopment projects by accommodating the timeframes of developers. OER encourages pre-application meetings to determine upfront ways to expedite investigation and cleanup, and has developed a sophisticated infrastructure to support the LBCP with on-line applications, templates for work plans and reports, training for consultants, and a searchable vacant property database.⁷²

Financial Incentives - OER, through the Brownfield Incentive Grant Program (BIG), administers an innovative grant program that encourages pre-development activities, investigation and remediation of NYC sites as well as projects that are consistent with NYS BOA program.⁷³ The BIG program offers

69. PlaNYC is available at <http://www.nyc.gov/html/planyc2030/html/downloads/download.shtml>

70. Councilman James F. Gennaro introduced LL21 and led the Council's unanimous approval 48-0 of this bill on Earth Day 2009.

71. NYCOER website, NYC Brownfield Cleanup Program, About at <http://www.ci.nyc.ny.us/html/oer/html/nycbcp/about.shtml>

72. <http://www.ci.nyc.ny.us/html/oer/html/home/home.shtml>

73. <http://www.ci.nyc.ny.us/html/oer/html/big/big.shtml>

a series of grants pre-LBCP enrollment, which include investigation and technical assistance as well as post-LBCP enrollment grants that cover remediation activities, the acquisition of environmental insurance and bonuses for achieving the most stringent cleanup standards, for preferred community development projects and for projects that will be built consistent with an area-wide plan. BIG also provides special matching grants and technical assistance grants to BOAs and other community-based organizations.

Liability Release – The New York City Brownfield and Community Revitalization Act authorized the City to enter into agreements with federal and/or state agencies and other entities that formally recognize cleanups for which a city certificate of completion has been issued, and that stipulate that the federal and/or state agency or other entity does not anticipate taking further actions requiring additional cleanup and investigation for contamination appropriately addressed under the LBCP.⁷⁴



Mayor Michael Bloomberg and NYSDEC Commissioner Pete Grannis execute MOA while Councilman James Gennaro, OER Director Dan Walsh, Senator Jeff Klein and Assemblywoman Naomi Rivera look on.

Pursuant to the Act, on August 5, 2010, the City entered into a Memorandum of Agreement (MOA) with the NYS Department of Environmental Conservation that established a cooperative arrangement between the City and the State for the City to: 1) provide regulatory review and sign-off on lightly to moderately contaminated sites; and 2) to admit sites with petroleum spills into the LBCP. DEC retains full authority, including making final closure determinations, over petroleum spills at enrolled sites. The City liability release is important as is NYSDEC's commitment not to take any further actions related to contamination that an enrollee has appropriately addressed under the LBCP.⁷⁵ However, these commitments fall short of a full state liability release for sites enrolled in the LBCP. The MOA requires a significant amount of project information and document exchange between NYSDEC and OER, periodic audits of the LBCP and the preparation of annual reports by OER. These requirements will facilitate coordination between the agencies and allow ample opportunity for NYSDEC to monitor the program and its implementation. The New York State Asset Maximization Commission has called for statutory state liability protection for parties in the city program because it would increase participation in the city program, promote economic recovery, and increase tax revenue and job creation⁷⁶. Action by the Governor and Legislature is needed to provide statutory liability protection for volunteers that complete cleanups in the NYC LBCP.

- **Tax Increment Financing (TIF)** - has been used by communities around the country to promote development and more recently to advance the redevelopment of blighted areas – and could prove to be a useful complement to the BOA program. Advocates in New York are seeking TIF legislation that would authorize school districts as well as municipalities to allow

74. NYC Brownfield Cleanup Law at http://www.nyc.gov/html/oer/html/about/revitalization_act.shtml

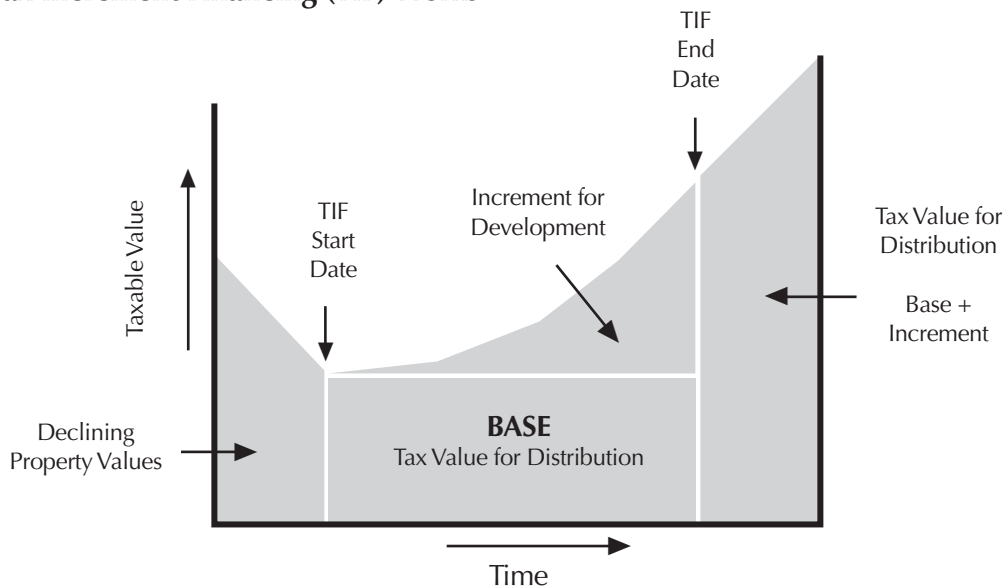
75. Ibid

76. NYS Commission on State Asset Maximization, Final Report, June 2009, p. 73.

the school portion of real property taxes to be used to pay off TIF bonds, thus greatly expanding the potential pool of funds available to support TIF bonds and thereby increasing their overall attractiveness to investors.⁷⁷

Generally, TIF legislation authorizes municipalities to reserve the increase in tax revenues generated by the new development in a designated TIF district to pay the annual interest and principal costs of TIF bonds, the proceeds of which have been used for improvements in the district. The municipality designates an area characterized by blight and disinvestment as a TIF district and prepares a redevelopment plan for the district. The taxable value of property in the TIF district is frozen at the point of designation, thus establishing the base. TIF bonds are issued to finance the improvements identified in the TIF district redevelopment plan needed to make the area fit or ripe for redevelopment. The incremental value of the increase in taxes is used to pay off the TIF bonds. Once the TIF bonds have been paid off, the incremental portion of the TIF district's taxes reverts to basic revenue.

How Tax Increment Financing (TIF) Works



TIF represents a potentially powerful financing mechanism for BOA plan implementation. A well designed TIF law for New York would enable municipalities to present BOA plans to their legislative bodies for consideration as TIF “redevelopment plans.” Once approved, TIF funds could be used in coordination with BOA resources and other incentives to attract private investment into the BOA/TIF redevelopment area. What’s more, TIF has the potential to be particularly valuable at the municipal level because it can generate capital funds that are outside the municipal bonding limit.

A TIF law for New York should promote smart growth, environmental justice and community revitalization. Accordingly, environmental remediation and brownfield redevelopment should be specified as allowable uses of TIF funds, as so much of what constitutes blight in New York includes contaminated properties. In accordance with smart growth and urban development policies, it is critical that TIF in New York be strictly targeted to areas of real blight, for brownfields and related infrastructure improvements in high poverty or high unemployment areas. New York cannot afford to maintain new infrastructure on greenfields, even if the sprawl development is funded with TIF.

77. A. 2378-A (Schimminger) / S. 1716-A (Stachowski)

- **Land Banking** – Land banking is a tool that has been used increasingly in cities around the country to achieve a variety of community revitalization objectives for about 10 years. Currently, there is legislation pending in Albany (A700-A) that would provide New York municipalities with the authority to establish land banks. Modeled after the Genesee County, Michigan land bank, the proposed NY law would allow any “foreclosing governmental unit” to form a land bank, which is a type C not-for-profit corporation. The purpose of a land bank is to efficiently acquire, hold, manage and develop tax-foreclosed properties with the long-term interest of the community in mind. The legislation would authorize municipalities to assign tax claims to a land bank, operated and governed locally, as an alternative to selling tax liens. One of several models, the Genesee County Land Bank, established in 2002, takes ownership of thousands of parcels seized by the government for unpaid property taxes. It sells its more valuable tax-foreclosed properties, mostly in the suburbs, to raise cash, then uses that money to fix up blighted areas.

The Land Bank approach uses the real estate tax system to place vacant properties in the hands of those interested in positive redevelopment. Neither remediation nor redevelopment of vacant properties – both of which result in higher assessments and higher real estate taxes – are encouraged by the current tax structure and tax lien auction sales are often to distant parties with no interest in redevelopment

Advocates of the NY legislation are focused on using land banks in connection with the foreclosure crisis that exists, particularly in several upstate cities and their metro areas. Since the Land Bank authority is focused on addressing the problems of vacant and abandoned property in a coordinated manner and in fostering the development of such property to promote economic growth, there is a direct link to brownfields, which are frequently vacant or under-utilized.

It should be noted that New York City has a unique, highly sophisticated tax lien program that shares some characteristics of the land bank approach. It utilizes New York City’s strong market (many tax liens are redeemed by owners); identifies distressed properties and links multi-family buildings to NYC Housing Preservation and Development programs; and uses a trust and a form of securitization that also provides future tax payments. The result for NYC has been greater revenues, spent mainly on affordable housing in distressed multifamily properties, and a very small number of abandoned brownfield properties.

There is also the possibility that land banks could become a powerful tool to help advance BOA plan implementation. In order to help finance land bank operations and alleviate the financial impact on government, the legislation includes a financing component. Once a land bank disposes of a piece of property and it returns to the tax rolls, the land bank could recapture 50% of the real property taxes for the five years following the transfer. This would allow the land bank to fund operations, property management, demolition and other designated programs. In this time of fiscal austerity, new tools which are revenue neutral, such as land banking, deserve a close examination.

NPCR Program Overview

NPCR is carrying out a multi-pronged initiative which was developed through on-the-ground work with community based groups, nonprofit and for profit developers, environmental justice organizations, community lenders, and nationwide research on innovative programs, that is designed to provide the tools and capacity necessary to promote community-based productive re-use of brownfields. NPCR's activities occur in two general areas: the provision of technical and financial assistance to brownfield redevelopment projects and to Brownfield Opportunity Areas Program grantees; and efforts to create and improve City, state and federal programs and policies that comprise the infrastructure for the brownfield redevelopment arena. In addition, NPCR is widely recognized as being instrumental in the conceptualization and creation of NY's Area-wide Brownfields Opportunity Areas (BOA) program, intended to revitalize low-income neighborhoods burdened by multiple brownfield sites. Since 2003, when the NYS Brownfields Law was passed, NPCR has worked to secure resources for communities participating in the BOA program, including \$25 million awarded by NYS to 100 communities; and to strengthen state and city policies to provide preference and priority for the implementation of area-wide plans. For more information about NPCR financing, technical assistance, training and policy work, please see our web site at www.npcr.net

NPCR Program Staff

Jody Kass, *President and Executive Director of NPCR* – Jody co-founded NPCR after 12 years at the nonprofit NYC Housing Partnership and stints on Capitol Hill and in Mayor Koch's housing office, bringing a wealth of public policy expertise and affordable housing development to NPCR. As Executive Director, Jody manages the overall organization and the day-to-day activities of NPCR, including fund raising, operations of the board of directors, and conceiving and implementing a broad range of program activities.

Laura Truettner, *Deputy Director* – Laura is a geologist with over 20 years experience in the brownfields investigation and remediation arena. Laura has been an integral member of NPCR's staff for many years and has had a strong hand in the development of NPCR's programs and activities. Laura provides the technical expertise and support to link the issues extraordinary to contamination with the more traditional pre-development issues.

John Fleming, *Policy Director* – John has worked in the field of community development, environmental justice and planning for over 15 years and has the lead responsibility for managing NPCR's policy efforts in Albany, for coordinating with BOA grantees on a statewide basis, community outreach and for building NPCR's coalition.

Tawkiyah Jordan, *BOA Technical Assistance Director/Community Liaison* – Tawkiyah is an expert in on-the-ground BOA applications and contract management. She has been a planner for 10 years and was most recently, the Director of Community Development and Planning at a South Bronx nonprofit.

Jeff Jones, *Media/Policy Advisor* – Jeff has been an integral part of NPCR and NPCR's successes since it was founded. Jeff is based in Albany and significantly strengthens NPCR's ability and capacity in connection with the media, environmental organizations and government officials.

SUMMARY REPORT ON NPCR'S ALBANY BROWNFIELDS SUMMIT IV:

**NEW OPPORTUNITIES FOR NY:
BOA, SPOTLIGHT COMMUNITIES, AND PLACE-BASED
REGIONAL COLLABORATION**

On May 10-11, 2010 over 100 community leaders, local officials and other stakeholders from across New York State attended NPCR's two-day Brownfields Summit. This was NPCR's fourth convening of stakeholders involved in the BOA program in Albany. Speakers included local, city, state and federal agency officials, as well as community and municipal leaders participating in the Brownfield Opportunity Area program and their consultants. Participants engaged in an energetic and informative dialogue on many of the issues and challenges facing community revitalization in communities most impacted by brownfield sites.

Summit Presenters/Speakers:

David Lloyd, USEPA	Brian Coleman, Greenpoint	Sandra Allen,
George Stafford, NYS DOS	Manufacturing and	Environmental Facilities
Elizabeth Yeampierre,	Design Center	Corporation
UPROSE	Steven Kearney,	Dave Gahl, Environmental
Caroline Quidort,	City of Syracuse	Advocates
City of Binghamton	Kenneth Smith,	Sarah Lansdale,
Dennis Sutton, Buffalo Urban	Local Waterfront	Sustainable Long Island
Renewal Agency	Revitalization Program (LWRP),	Dan Walsh, NYC's Office of
Peter Walsh, NYS DOS	NYS DOS	Environmental Remediation
Steve Finkle, City of Kingston	Kyle Wilber,	Peter Iwanowicz,
Linda McQuinn,	Local Government Efficiency	Assistant Secretary to
Town of Canton	Program (LGEP), NYS DOS	the Governor for the
Val Washington, NYSDEC	Christopher Eastman,	Environment
Dale Desnoyers, NYSDEC	Land Use Training and	Patrick Reilly, Wanderlust
Lorraine Cortes-Vazquez,	Technical Assistance Program	Jody Kass, NPCR
NYS DOS	(LUTTP), NYS DOS	Laura Truettner, NPCR

HIGHLIGHTS OF LESSONS LEARNED⁷⁸

Community Engagement through BOA

- Community engagement transforms people and government agencies by getting them to work outside of their comfort zone and increase their cultural proficiency.
- There is a need to think of and use the community as partners – they have a lot to offer.
- Community engagement approaches must recognize that local community reps often lack the resources (such as time and/or child care services or transportation) to participate over the longer term.
- There is a need to create a toolbox of community engagement techniques from on-the-ground work and leadership in EJ communities.
- Environmental Justice (EJ) provides a framework for thinking about all communities, and brownfields provide an opportunity to address old impacts in many of these neighborhoods.
- The BOA program provides a new construct for bringing people together.

78. While this report was informed by the comments of and discussion among the attendees at the Summit, the conclusions and recommendations presented herein are solely NPCR's.

- In Upstate neighborhoods, community engagement can be a struggle especially when there is no development pressure. Planning fatigue is a serious obstacle in many communities, as some community members believe that the “next development” may never occur.
- It is important to understand the difference between community notification and opportunities for authentic public input.
- Developing different approaches to involve diverse groups in the community is important, for example, Portland OR has a planner dedicated to getting youth involved in decision making processes.
- Sustained community engagement is difficult. If real community engagement is important to the process then the community conversation cannot focus on brownfields redevelopment as an economic issue, it must be discussed in the context of the larger issues that people are dealing with.
- Recommendations for engagement:
 - Build milestones into the planning process;
 - Connect the social issues to the planning effort;
 - Provide resources to train the Steering Committee; and
 - Government must meet community where it is located.

Spotlight Community Initiative and Inter-agency Collaboration in Distressed Communities

- The Spotlight Community Initiative brings multiple agencies into a community and motivates coordinated agency action around the provision of resources to community based plans.
- The area-wide approach can be applied at the regional level to align federal, state and local resources.
- The Spotlight Workshop provides an opportunity to create relationships, establish a process for follow-up, and garner additional funding.
- Recommendations for Workshops
 - Need a well thought out, realistic community initiated revitalization strategy/plan. The plan should have well-articulated actions and a strong local partner.
 - Prepare thoroughly for the interagency forum, including an agency briefing before the meeting to identify the types of decision-making and which agency staff person(s) should be sent.
 - Conduct the forum in an environment that is conducive to collaboration and consider arranging site visits, which are crucial to creating a context for projects.
 - It is important to get commitments to action, create milestones to show progress, create confidence, and determine short-term and long-term priorities.
 - Pursue small projects that will provide early successes and larger projects simultaneously.
 - There is a need for a local task master to monitor progress.
 - DOH, because of its expertise in assessing human health impacts needs to be part of the Smart Growth Cabinet or at least party to some of the discussion around BOA site assessments and other implementation projects in which questions about health impacts arise.

Developing/working with Local Steering Committees (SC)

- Research how engaged a person is likely to be over time to determine who to invite to SC.
- Training is needed for community members of SC to learn from professional consultants.
- Training is needed for professional consultants to learn to work with committees with diverse opinions and levels of expertise and ensure that quieter voices around the table are also heard.

The Need for Preference and Priority

- Preference and priority for resources for projects consistent with a BOA plan is in the 2003 law.
- BOA plans should get preference for relevant funding programs because they provide a clear signal of how the community has interpreted the landscape for the federal and state agencies.
- Preference and Priority promotes justice. Communities that suffer from lack of private, and in some cases, public investment did not in most cases cause their own condition.
- Communities need a planning tool that comes with resources that do not disappear when the local government changes.
- Some examples of preference and priority:
 - RESTORE NY specifically spells out giving preference and priority for BOA programs.
 - 2008 Amendments to the Brownfields Law provides a 2% BTC bonus for sites built consistent with a BOA plan.
 - The Environmental Restoration Program also has a preference for sites in a BOA study area, however it is currently out of money.

Addressing Defunct Auto Repair/Car Dealerships as an Area-Wide Problem

- Description of Problem
 - Auto dealerships are clustered near each other in high visibility locations.
 - The average car dealership in LI is 1.5 acres; in newer communities 4 - 10 acres.
 - Lots are oddly sized and typically contaminated with petroleum and solvents.
 - Redevelopment, often as pharmacies, is happening in affluent neighborhoods. An obstacle to re-use for affordable housing is lack of parking.
 - Lost tax revenue and vacant spaces are now a growing problem.
 - Sustainable Long Island is pulling together a county-wide BOA that will help tackle this problem.
- EPA's Office of Underground Storage Tanks has a program that could be useful in addressing this problem. One of the action items for this program is to look at the problem of closed auto dealerships- EPA is looking for a corridor with abandoned gas station sites to be used as a pilot.
- The American Recovery and Reinvestment Act of 2009 also included \$200 million for the cleanup of leaking underground storage tanks.
- There is the opportunity to influence how the EPA's Office of Underground Storage Tanks moves forward on the closed auto dealership issue. Foreclosure and land banking are likely to be part of the mix.

Green Jobs and the Green Economy

- There is a need to broaden the brownfields conversation to emphasize the relationship of brown-field redevelopment to sustainability and the green economy.
- An issue worth considering: How do you evaluate an industry that uses a dirty technology to make green products – e.g., there are green jobs/industries that are harmful to the environment, such as solar power manufacturing.
- There is a need to consider job diversity since manufacturing/industrial jobs are leaving urban areas.
- Integrating smart growth principles into a master plan is a step toward bringing green jobs to a developed space.

HIGHLIGHTS OF KEY BROWNFIELD RESOURCES, PROGRAMS AND INITIATIVES

Federal Resources, Programs and Initiatives

- EPA provides assessment, cleanup and revolving loan fund grants but can only fund about 30% of the applications received. Site assessment funds include: EPA site assessment grants, EPA state and tribal response programs, EPA Targeted Brownfields Assessment Programs.
- New USEPA priorities include:
 - Brownfields remediation, air, water and area-wide planning are four high priority initiatives
 - New emphasis on using site assessment dollars for area-wide planning
 - How to incorporate preference and priority for resources into programs
- Partnership for Sustainable Communities – EPA is engaged with HUD and DOT on a new planning initiative.
- Brownfield Area-Wide Planning Pilot – An area-wide planning RFP has been released; the grant funds are flexible and can be used for a wide range of activities. In this first round, EPA will provide \$175K to 20 area-wide planning projects and prefers to fund existing area-wide planning efforts where there is already a strong coalition and a planning infrastructure in place. It is hoped that projects will also identify ways to engage with HUD and DOT.
- The Urban Waters Initiative – was announced last spring but hasn't completely taken shape yet and there will be an opportunity to influence its direction. This initiative is about applying area-wide planning approaches to community waterfronts, like DOS' LWRP program. (note: the name of the initiative might be changed to Community Waters Initiative). The Office of Water will issue a solicitation for proposals in 2011. The budget to fund "Showcase Communities" may be about \$15 million. There will be brownfields money in tandem with the money from the Office of Water.
- Federal Brownfields Bill/Budget
 - The total EPA budget has been about \$160 million for many years. The Obama administration has proposed to increase the funding by about \$43 million and is hiring new staff specifically for the brownfields program. A large portion of the additional funding will go toward supplementing existing revolving loan funds. The EPA is identifying ways to make the RLF program more consistent and easier for local communities to use.
 - Reauthorization is still viable, and priority is being given to expanding nonprofit eligibility and increasing the limits on grants.

New York State Resources, Programs and Initiatives

Climate Smart Communities

- Multiagency program that supports cooperation at the local government level.
- Local governments take the "Climate Smart" pledge and the state steers resources to these localities in order to help them become climate neutral.
- Communities need to be aware that outward growth exacerbates existing environmental problems. Brownfields redevelopment can help staunch this growth by bringing sites in the urban core back into active use.
- Over 80 communities are now part of the Climate Smart Community Program and are encouraged to look at the programs around the state that address environmental problems through different lenses. One focus is on redeveloping existing infrastructure instead of constructing new infrastructure.

Environmental Facilities Corporation (EFC)/New Sources of Funding

• Clean Water Collaborative (CWC)

- CWC was established in August 2010 by Governor Paterson with a mission to identify and secure federal funding for water infrastructure in NYS and to develop a new, more sustainable approach to maintaining and investing in waste water and drinking water infrastructure.
- CWC comprised of a diverse group of organizations from the environmental sector, business, labor and state and local governments. It is co-chaired by Robert F. Kennedy Jr., Chairman Waterkeeper Alliance and Ross Pepe, President Construction Industry Council and Building Contractors Association.
- NYS needs \$11 billion in upgraded or new water-related infrastructure and CWC efforts are underway to make these projects sustainable and energy efficient.

• EFC/DOS Pilot: State Revolving Fund (SRF)

- The State Revolving Fund provides low cost financing for two types of projects:
 - Clean Water SRF provides low cost financing for sewers and plants to meet state water quality standards.
 - Drinking Water SRF provides low cost financing for drinking water infrastructure to meet potable water standards.
- Over time the SRF has paid for \$11B in projects, mostly infrastructure. Recently both the Clean Water and Drinking Water SRF received large injections from the Recovery Act for new projects.
- Environmental Advocates (EA) did a study in 2008 to determine whether these SRFs were fostering or limiting sprawl and found that between 2003 and 2008, 60 projects worth \$190 million were extending distribution systems outside of declining city centers
- Also a recognition that planning is often based on an assumption of growth. This has led to over-capacity in older areas that have experienced population declines. (Buffalo put a moratorium on new sewer lines to force people to move back into the city center).
- EA would like the state to move towards funding improvement of existing infrastructure instead of funding projects that increase sprawl and new communities on the fringe of existing cities/communities and so a pilot program was created.
- To integrate community planning with infrastructure projects, EFC will provide \$1 million in pre-planning that will be administered in conjunction with DOS.
- EFC's scoring system for grants will give preference to projects on a brownfield and consistent with a BOA plan.
- Communities who want access to this pre-planning money must have their community/project placed on the EFC's Intended Use Plan list of projects. The sooner the project gets on the list the better, even if the project is not ready to start.

• Green Innovations Grant Program 2010 (GIGP 2010)

- Grant program being administered by EFC through the Clean Water State Revolving Fund
- GIGP 2010 will provide seed money for projects which spur green innovation, build green capacity, and facilitate technology transfer throughout the State. Eligible projects will improve water quality and demonstrate sustainable wastewater infrastructure in communities across the State.
- The program will provide \$15 million. More details about the program can be found at <http://www.nysefc.org/home/index.asp?page=1046>.
- Green infrastructure grant program is broader than most EFC programs and CBOs are eligible to participate.

Other DOS Programs

- BOAs receive extra points on applications made to other DOS programs.
- Local Waterfront Revitalization Program:
 - Communities should plan for their waterfront and their watershed at the same time using Environmental Protection Fund resources. Use resources from different funding sources in a complementary way. Initial focus of planning was on waterfronts, that has transitioned to include both waterfront and the associated watershed- 450 communities working on watershed management plans
 - Through this program, DOS has provided \$320 million in grants, with \$23 million in grants in 2009
 - Grants are only available to munis for now, looking to provide to non-profits in the future
- Local Government Efficiency Program - Provides funds for municipal consolidation projects such as infrastructure. This could complement BOA infrastructure projects.
- Land Use Training and Technical Assistance Program - This assistance is typically provided in connection with regional and county planning conferences, but nongovernment officials are welcome, and it might be useful for BOA Steering Committees.

DHCR/State Housing Program

- Annually DHCR spends a quarter of a billion on affordable housing projects. Over the past two years, with the Qualified Allocation Plan, DHCR has changed the focus of its award process to achieve other policy objectives. DHCR is now looking at how to support the cleanup up and redevelopment of brownfields. In its evaluation process, DHCR will provide bonus points for brownfield sites, smart growth initiatives, e.g., proximity to transit and services, compact design, etc. and for housing plans that are consistent with a larger community development effort like the BOA program.
- DHCR reduced the points given for project readiness because that prejudiced awards toward suburban areas and against urban projects, which are more complex and take longer.
- DHCR has not had an increase in funding, so it's also important to look at other pots of money like those in the Brownfield Cleanup Program to support affordable housing projects.

NYSDEC Site Assessment Funds

- Funding for site investigation is important for brownfield projects particularly in LMI communities.
- The first BOA Step 3 and site assessment applications were recently received.
- DEC is only involved in the site assessment portion of the BOA program.
- Whether or not a site is in a BOA does not alter the clean up requirements.
- DEC may limit the amount of site assessment funding available to any one BOA to \$500K.
- Some issues with site assessment funding were discussed, including:
 - Because site assessment funds are only available for sites owned by volunteers or municipalities, this limits the number of eligible sites.
 - There is a concern about reporting requirements in terms of what happens when a site assessment reveals contamination and whether property owners may be faced with new legal, financial or timing issues.
 - A question was raised on the timing of application for and award of the site assessment funds; DOS is considering making these funds available during Step 2 as well as Step 3. Often the BOA grantee does not know during the Step 2 application which sites need assessment nor when the property owner will be ready to proceed with the site assessment. It was suggested that if BOA grantees could apply for site assessment funds that are not site specific, this might solve the problem.

New York City Resources, Programs and Initiatives/Office of Environmental Remediation (OER)

- Preference and Priority - There are presently BOA grants to 17 NYC communities. NYC is giving preference and priority to properties within BOA study areas, including the BOA Strategic Property Cleanup Grant, which provides an additional \$10,000 for cleanup on preferred community development projects (projects that provide specific benefits or amenities to local communities) in BOA study areas.
- NYC Brownfields Capacity Building project – NYC has a very large governmental structure whose resources are critical to making the BOA program work in NYC. This initiative seeks to build the knowledge and capacity of City agency personnel and BOA CBO staff to foster partnerships and conduct BOA planning in a coordinated and effective way. The work is set to begin this summer.
- NYC Brownfield Cleanup Program – mirrors the NYS Brownfield Cleanup Program, uses NYS cleanup standards, and may be able to act as Step 4 of the BOA program. OER is interested in providing communities with options for advancing projects.
- Brownfields Incentive Grant Program –\$10 million to support projects on brownfields throughout NYC.
 - OER provides matching grants to BOA CBOs up to 10% or \$25,000. This money will be available retroactively and will be based on the plans, budget and local match described in the original application.
 - OER provides \$10,000 an application to help CBOs apply for BOA grants.
 - OER provides up to \$25,000 during the pre-development phase and up to \$75,000 through the rest of the assessment process. The target is to reimburse contractors within six weeks of invoice.
- Vacant Properties Database – is a searchable property e-database, which will be launched in June 2010, making electronic searches for vacant property information possible. OER will use it to identify locations for new BOAs, pull together info, prepare a preliminary plan and then market those areas to community organizations.

Green Jobs/Green Economy Resources

Green Jobs-Green New York (GJ-GNY)

- Gov. Paterson signed the Green Jobs-Green New York Act in fall 2009.
- GJ-GNY is a statewide program to promote energy efficiency and the installation of clean technologies to reduce energy costs and greenhouse gas emissions. It will support sustainable community development and create opportunities for green jobs.
- The program is scheduled to begin this fall and will be administered by the New York State Energy Research and Development Authority (NYSERDA), the program:
 - Provides \$112 million in funds, part of which will be used for a revolving loan fund to finance eligible projects
 - Authorizes NYSEDA to establish a program for energy audits and energy efficiency retrofits or improvements for residential, small business, and not-for-profit property owners
 - Requires the selection of outreach, enrollment, and other related program support services through a competitive process
 - Establishes an Advisory Council to advise NYSEDA on program design and implementation.
- Highlights of program include: (for more information got to <http://www.nyserda.org/GreenNY/>)
 - Energy audits for eligible applicants based on a sliding scale
 - Energy efficiency improvements such as repair or replacement of major household appliances, installation of thermal solar heat or hot water systems, insulation, replacement of inefficient light bulbs and fixtures and fuel switching to convert an electrically-heated building to a more efficient heating

- NYSERDA will work closely with the NYS Department of Labor and partner with community-based organizations, workforce development organizations, and labor organizations to provide the necessary workforce training to support the program, including, but not limited to entry-level, occupational, continuing education and advanced training, and apprenticeships.

Proposed amendment to Kerry Lieberman Climate Bill

- Effort to amend the Kerry-Lieberman climate bill to include a \$30 billion green manufacturing revolving loan fund that would provide funds to small businesses to retool for the green economy.
- Amendment was introduced in the Senate by Sen. Sherrod Brown (D-OH) and called “Investments in Manufacturing Progress and Clean Technology” (IMPACT). It was included in the House Waxman-Markey bill.
- No action has yet been taken on the bill, an August 2010 vote was canceled because of lack of support

Sustainable Neighborhood Demonstration Program

- \$2 million program announced by Governor Paterson in January 2010 to spur the rehabilitation of vacant or blighted residential properties and redevelop vacant land across upstate NY.
- Local governments, municipal housing authorities and not-for-profits can apply for the funding through the State Division of Housing and Community Renewal (DHCR) and the New York State Housing Finance Agency (HFA).
- Uses existing program resources at DHCR, the Housing Finance Agency, the Empire State Development Corporation, the Department of Environmental Conservation, the Department of Agriculture and Markets, the Department of Transportation, the Office of Parks, Recreation and Historic Preservation, the Department of State, and the New York State Energy Research and Development Authority (such as weatherization and NYHomes) in creative new ways to address distressed properties and the critical need for affordable housing in upstate New York . The priority is developing a coordinated approach to rebuilding neighborhoods.
- ESDC has specifically been trying to identify areas where the agency can take a lead on sustainability.
- One example is the Regional Blueprint Program – looked to local leaders for ideas for redevelopment. When applications came in used smart growth based criteria for evaluation – i.e. reuse of infrastructure, in a BOA study area, etc.

Empire State Development/Legacy Manufacturing Program

- Focus on giving new life to unused areas in cities by re-purposing abandoned industrial facilities.
- Program to establish an inventory of old manufacturing sites/areas available around the state, provide funding for redeveloping those properties and bring them back to the market.
- Program will also create industrial assistance centers to educate businesses on alternative manufacturing approaches and support marketing efforts for underutilized facilities.
- Work is being done with monies already committed to other programs at ESDC. Interagency collaboration has been key to making this happen.

NPCR's Brownfields Summit IV Participant List

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