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**BROWNFIELDS BREAKTHROUGH**  
A Report on New York's  
Community Revitalization Tool  
for the Future



**BROWNFIELD OPPORTUNITY AREA**  
PROGRAM



**NPCR**  
NEW PARTNERS FOR  
COMMUNITY  
REVITALIZATION, INC.



# New York's Community Revitalization Tool for the Future

## **BROWNFIELD OPPORTUNITY AREA**

### P R O G R A M

#### INTRODUCTION

Nearly a decade in the making, the State's 2003 Brownfield Law is packed with new ideas and a serious financial commitment to revitalizing communities through brownfields reclamation. The law is designed to get New York going again on the important work of making polluted lands safe for our families, protecting our water, and rebuilding older urban neighborhoods while conserving outlying greenfields. The most well known part of the law is the Brownfield Cleanup Program, housed in the Department of Environmental Conservation, which offers financial incentives to owners and developers to voluntarily undertake the investigation, cleanup and redevelopment of contaminated land. Less well known, but believed by many to be the most innovative piece of the 2003 Law, is the Brownfield Opportunity Area (BOA) program, a unique approach to reclaiming vacant and under-used properties, mainly former industrial lands that are doubly unattractive because they are likely to be contaminated with hazardous waste.

The BOA Program is a community planning tool that seeks to address entire neighborhoods and clusters of brownfields within those neighborhoods, including the conditions fueling abandonment and decay. It encourages residents and community groups to work with municipalities, providing planning grants and seed money to help create the vision that subsequent cleanups and redevelopment projects will help fulfill. It is possible, through BOAs, to attract new investments in neighborhoods that might otherwise never inspire a developer or site owner to redevelop an abandoned property. The BOA Program was conceived as a tool to achieve environmental justice by enabling 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 brownfield sites.

At its heart, the BOA program is about creating value. It recognizes that a brownfield program that is 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. Instead, the BOA approach can reverse the cycle of disinvestment and decay – not by cleaning up one parcel at a time, but by creating a plan for an entire area, including housing, shops, small manufacturing, public amenities, and infrastructure improvements: street lights, trees, parks, sidewalks and roadways. These are the things that together define functional communities and livable neighborhoods that allow current residents to remain and also attract new residents. The BOA program should be a key piece of a statewide smart growth strategy, with its encouragement of infill development, land recycling, and urban planning that will also serve to curb sprawl and the attendant automobile dependence and rampant consumption of open space.

Unfortunately, in the three years since the Brownfield Opportunity Area program was created, it has received neither the promised resources nor the government commitment that it requires and deserves – a circumstance that has crippled its potential and discouraged its participants, despite significant interest from communities across the State.

This report is the first public review of the program. It was compiled by New Partners for Community Revitalization, Inc. (NPCR) based on the collected observations and experiences of several BOA grant recipients, State government agency representatives, NPCR’s own board members, who represent a diverse range of stakeholders, and participants in a Roundtable Discussion that took place in Albany in June of last year.\* The report is intended to remind readers of the tremendous opportunity and promise that the BOA program holds, and the hopes that the many participants and aspiring participants have for their own communities under the BOA program. It also describes opportunities and obstacles that have been identified by its contributors, and makes recommendations for changes needed to assure that the substantial promise that the program represents is met.

\* Attachment #1 contains the names of the individuals and organizations who joined in the Roundtable discussion, and a compilation of the ideas generated during the exchange.



# THE BROWNFIELD OPPORTUNITY AREA PROGRAM

When New York State passed the 2003 Brownfield Law it created what many believe is the most innovative brownfields planning program in the country – the Brownfield Opportunity Area program. The BOA program brings together the key ingredients necessary to catalyze the revitalization of economically distressed areas through the reclamation of brownfields in a way that will help to meet local community needs and ensure the sustainability of the neighborhoods in which these sites have long been eyesores. The BOA program is also critical to reducing unhealthy sprawl development.

The BOA program has two primary tools to accomplish these goals:

- **FUNDS FOR PLANNING:** The statute makes provision for planning dollars that can be flexibly applied to meet the specific needs of each participating community, including funds to pay for convening and conducting a visioning process, conducting feasibility and marketing studies, developing acquisition strategies, etc.
- **PREFERENCE AND PRIORITY:** The law creates a preference and priority status for projects that are consistent with a BOA plan, allowing for greater access to funding and other incentives. This provision was designed to encourage owners and developers to participate in the BOA planning process and to build projects that advance a BOA plan.



## THE VISION

The Brownfield Opportunity Area program was conceived during the seven-year policy debate that led to the passage of the Brownfield Law in 2003. The overall concept for the program and its various innovations emerged from a consensus-based process involving many diverse stakeholders:

- **COMMUNITY GROUPS** interested in participating in end use decision-making about their neighborhoods: The BOA program is viewed as a tool to carry out long term planning around catalytic or aggregated brownfield sites. While offering real opportunity for New York's neglected upstate urban centers, the program is also strategically important in many downstate areas where the real estate market is over-heated. The cornerstone of the BOA program is an area-wide approach to reclaiming brownfields and revitalizing neighborhoods so that new community anchors are established, creating value and reversing the spiral of disinvestment, decline, and decay. It provides flexible funding for market and infrastructure studies and other activities needed to carry out a constructive visioning process, a process that can generate interest and investment in and of itself.
- **ENVIRONMENTAL JUSTICE GROUPS** interested in ensuring that noxious end uses are not sited disproportionately on reclaimed brownfields in low and moderate income neighborhoods and communities of color: The BOA program is viewed as a tool to identify community desires and to stimulate authentic community engagement and collaboration among local residents, businesses, property owners and municipalities. The result will be a shared vision by and for the particular neighborhood, based not on what is there now or what the real estate market might otherwise attract or resist, but on what the community needs and wants. The expectation is that by looking at the area as a whole, the most productive, innovative and appropriately scaled end uses will be planned, creating new opportunities for greenways and other open space uses, affordable housing, community services, and small scale local job producing businesses and industries – all while mitigating historical and future environmental injustices.
- **ENVIRONMENTAL GROUPS** concerned with the health impacts of the urban environment, the lack of urban parkland, the identification and clean up of historic contamination, and unhealthy and environmentally devastating sprawl development that is spurred by the decay and the quality of life deficits of our urban centers: The BOA program is intended to begin to address the greenfield development bias through the statutory preference and priority provision for BOA revitalization plans. Environmentalists also have a particular interest in the pursuit of sustainability, a concept that is imbedded in the BOA process and goals. The reuse of existing infrastructure and the re-establishment of vibrant urban communities will conserve resources, reduce pollution, and curb our destructive dependence on the automobile.

- REAL ESTATE DEVELOPERS/BUILDERS AND BANKS that see the potential for new real estate development and investment opportunities: The BOA program will make the pre-development process more efficient by establishing re-use plans, and it should reduce lawsuits that frequently arise when developers build without consultation with the local community. The financial rewards and other incentives associated with the program will also reduce investment risks.
- LOCAL GOVERNMENTS that need more tools and partners in their efforts to revitalize economically distressed areas, attract private investment, and increase the local tax base.



The 2003 Brownfield Law provides several million dollars\* annually for the BOA Program – real money for legitimate planning and smart growth results. In March 2005, the State awarded \$7.6 million to 53 communities. Thousands of New Yorkers are now poised to take part in the planning for their communities as soon as the State funds are released. And even while the program has been stymied by statutory and administrative obstacles (no money has actually been released as of early January 2007), the Department of State has made significant progress in getting the BOA program up and running. Dedicated staff have exhibited a desire to make this program successful and have been flexible and open to suggestions and input from grantees and other stakeholders. Because it is so new, there is the opportunity for the program to continue to benefit from the imagination and creativity of those charged with its administration and the BOA grantees’ ability to identify and articulate innovative solutions to the problems they face.

\* Each State budget since the 2003 enactment of the Brownfield Law has included \$15 million to be allocated at the discretion of the Legislature and the Governor pursuant to a Memorandum of Understanding for various aspects of the administration of the Brownfield Cleanup Program, the Environmental Restoration Program and the BOA program. This amount includes various unspecified Agency costs, Technical Assistance Grants under the BCP, and all BOA grants.

## THE VISION DEFERRED

The BOA program, while attracting a great deal of interest from communities across the State, has been hampered by unanticipated obstacles, many of them inherent in the program as adopted by the Legislature. It has been stymied by delays, confusion, redundancy, and a lack of clear government accountability. Most debilitating is the delay due to the mandated Legislative Memorandum of Understanding (MOU) by which the State's top three leaders (the Governor, Assembly Speaker and Senate Majority Leader) must agree up front on individual projects. This is compounded by the inefficient, dual agency administration of the BOA grant program. Addressing the Legislative MOU and other unnecessary bureaucratic processes to eliminate the egregious delays in the award and distribution of funds to New York's communities must be a top priority for Governor Spitzer and for every Legislator who cares about the viability of our urban communities.

As discussed more fully below, the program has also been hamstrung by two other major program flaws:

- a lack of incentives needed to encourage property owners to participate in the collaborative planning regime, despite statutory language that encourages related programs to offer "preference and priority" to BOA projects; and
- unnecessary bureaucratic processes, largely attributable to the fact the program is split between two agencies, with the Department of State (DOS) working directly with participants and the Department of Environmental Conservation (DEC) exercising oversight authority.



## FINDINGS AND RECOMMENDATIONS

*Given an unimpeded chance to meet its promise, the BOA program will prove to be a cutting edge strategy for urban revitalization, and for environmental and economic sustainability. Thus, NPCR's primary recommendation is that the State provide the BOA program with the attention and resources necessary to allow it to function effectively – and become an integral part of a Smart Growth Agenda for New York.*

With this as NPCR's foremost finding and appeal, the remainder of this report offers a roadmap for the removal of impediments and for improved program implementation. Based on research, discussions with other involved individuals and organizations, and its own experiences with the program NPCR has made the following findings and paired them with needed reforms. As noted, some of these can be carried out administratively; while others require statutory amendment:

### 1. REGULARIZE GRANT PAYMENTS TO ENSURE THAT FUNDING IS TIMELY AND RELIABLE.

Fifty-three communities around the State have already been awarded BOA grants ranging from \$20,000 to \$500,000 to assist in collaborative planning and to begin implementing strategies for the redevelopment of long dormant sites, yet as of early January 2007, not one dollar has left the State's coffers. Many of these communities have created steering committees and conducted preliminary planning meetings, generating excitement and expectations, and are poised to create exciting new visions for their neighborhoods. But with the bureaucratic delays in long-promised assistance there is a real danger that these efforts will lose momentum; local leadership is becoming disheartened and the lack of implementation resources is hampering cooperation on the part of private property owners.

### RECOMMENDATIONS:

- The BOA Program is one of the first programs in the country to offer significant and sustained planning dollars and other resources to support a collaborative, area-wide approach to urban redevelopment. But New York must demonstrate its commitment to the BOA program with a funding protocol that allows grant money to flow in a predictable and timely manner. As a new and more efficient approach to fund distribution is developed, the Governor should immediately take the steps necessary to release the BOA planning funds already awarded to enable the program to begin to function and thrive for the communities that have embraced the BOA concept. This includes expediting the contract signing and multi-agency review procedures and notifying grantees when they may request funding reimbursements. (Administrative)

- The State should create an automatic funding mechanism for the BOA program which will insure that funding will be available to BOA program participants to complete the multi-year planning and designation process without unjustified and debilitating interruption. (Statutory)



## 2. CREATE INCENTIVES FOR PRIVATE PROPERTY OWNERS/DEVELOPERS TO PARTICIPATE IN THE BOA PLANNING PROCESS AND COOPERATE IN PLAN IMPLEMENTATION.

Frequently, the ability of a neighborhood to reverse the cycle of disinvestment and decay is largely contingent upon whether or not one or a cluster of brownfield sites can be reclaimed for productive re-use. Unfortunately, in many areas, these strategic sites are privately owned, often by recalcitrant owners who are not willing to work with the community or government in getting their property tested, cleaned up and put to productive re-use. The BOA program was specifically created to address this obstacle to community revitalization, yet it has been hampered by a lack of incentives for cooperation.

The statute provides that nomination funds may be used for “the identification of strategic sites within the proposed brownfield opportunity area.” If the BOA program is going to be successful, there needs to be strong provisions to address the means of approaching these strategic sites as part of the BOA planning process. Because many BOA grant recipients have reported that they have been unsuccessful in securing the cooperation of brownfield owners in their planning efforts, incentives, (and possibly disincentives), are needed to encourage private property owners and developers to participate in the BOA planning process, and to encourage them to re-use their properties consistent with the BOA plan.

## RECOMMENDATIONS:

- The State should re-assign brownfield tax credits to encourage developers to work with CBOs and municipalities. The law might be amended, for example, by providing a 10% bonus to projects built consistent with a BOA plan and by denying credits to inconsistent projects (an 8% bonus is currently available for brownfields in Environmental Zones, which were created to assist more broadly defined economically troubled communities). This would promote participation of private property owners in the BOA planning process, foster implementation of projects in designated BOAs, and discourage oversized and incompatible uses. (Statutory)



- To give effect to the current statute, the Administration should be required to report annually to the Legislature on its implementation of the existing statutory provision that calls for preference and priority for resources going to BOA projects. (Statutory)
- The Governor should direct the DEC to establish eligibility criteria that provide that projects built consistent with a BOA would get preferential treatment for eligibility and timely treatment in the Brownfield Cleanup Program (BCP). (Administrative)
- The DEC should step up enforcement of the hazardous waste cleanup laws in areas where there are recalcitrant owners of strategic sites. (Administrative)
- The State should create financial and other incentives that could be offered through the Empire State Development Corporation or other State agencies to encourage developers and property owners to participate in and cooperate with the BOA planning process. (Statutory and Administrative)

- The Governor should require that the NYS Department of Transportation and Department of Parks Recreation and Historic Preservation be brought into the BOA process as early as possible, so that those areas needing road improvements or open space can be given priority executive agency attention. (Administrative)
- To maximize environmental remediation and reclamation opportunities in BOAs, the State should create and implement incentives for Superfund site owners to participate in the BOA planning process. (Statutory and Administrative)

### 3. CREATE ACCOUNTABILITY BY ELIMINATING OR AMENDING THE LEGISLATIVE MOU.

Current law requires that a Legislative Memorandum of Understanding (MOU) be agreed to and signed by the Governor, Assembly Speaker, and Senate Majority Leader prior to the expenditure of BOA dollars. Compliance with this requirement via a non-transparent decision-making process has led to extended delays in the execution and modification of the MOU for each round of BOA grants. The first round of BOA grants was delayed nearly two years before the MOU was signed; and the second and third round of BOA grant applicants continue to await a three-way agreement by the State's political leadership on amendments to the MOU. Moreover, the MOU has created enormous new bureaucratic requirements. What this means is that even when the BOA planning dollars are released, there will continue to be unpredictable and unexplained delays for BOA grant recipients as they seek and secure approvals pursuant to the MOU along the way. While accountability, balance and oversight are important, there are other ways to achieve those goals without hampering the work of local leaders by holding the BOA program hostage to high-level agreement on a detailed MOU.

#### RECOMMENDATIONS:

- Eliminate the excessive delays in making funding decisions on BOA grant recipients due to the current requirement for the top three government leaders (the Governor, Assembly Speaker and Senate Majority Leader) to agree up front on individual projects. This can be accomplished by eliminating the need for a Legislative MOU with respect to the BOA grant awards and replacing it with an annual reporting responsibility by the Executive to the Legislature on the selection of grantees, adherence to the statutory criteria, and the progress of the overall program. The MOU requirement could also be modified to provide for rolling admission funding decisions on new applications with notice to the Legislature, followed by the granting of awards within 30 days in the absence of objections. In addition, BOA program participants for whom subsequent funding has been approved by the Secretary of State to advance from stage to stage should automatically receive funding awards upon notice to the Legislature, provided that funding is available. (Budget).

#### 4. CREATE ACCOUNTABILITY AND REDUCE BUREAUCRATIC DELAYS BY ASSIGNING A SINGLE EXECUTIVE AGENCY THE RESPONSIBILITY OF ADMINISTERING THE BOA PROGRAM.

The statute establishes a dual agency construct for the administration of the BOA program. The DEC is given primary responsibility for oversight of the BOA program, with the requirement that at certain junctures the DEC must consult with the DOS, which is performing much of the planning assistance work under the statute. The two agencies have spent months developing a Memorandum of Understanding to clarify their respective roles, which will, appropriately, give the DOS the lead role in managing the program. Nevertheless, the dual agency responsibility has reduced accountability, contributed to unnecessary delay, stifled creativity, and inhibited the leadership necessary to build momentum and excitement.

#### RECOMMENDATIONS:

- One agency should be responsible for administering the BOA program. Between the DEC and the DOS, the better candidate is the DOS, which has historically functioned as the State's planning agency and liaison with local government. While the DEC should retain all environmental regulatory decision-making, DEC does not logically need to have a role in the administration of the BOA program, which requires distinct types of expertise unrelated to environmental considerations. (Statutory)
- The generic scopes developed by the State for grantees provide a significant and substantive role for the DEC in local planning. It makes no logical sense and creates unnecessary bureaucracy to provide a new cadre of planners within the environmental agency when DOS already has the expertise and experience to support local planning efforts. (Administrative)
- An important way to establish a more streamlined, seamless process is to significantly reduce the amount of materials that the State needs to review, and the number of sign-offs that the State needs to provide. BOA grantees and the State should agree on a detailed scope of work, schedule, and budget soon after a BOA grant is awarded. As long as activities fall within those parameters, the State's role should be pro forma review and acceptance, with periodic audits to ensure fiscal accountability. (Administrative)
- The State's role under the BOA program is as grant maker, not regulator. Efforts should be taken to ensure that the State's role is limited to grant administration. While there may certainly be actions undertaken by the BOA grant recipient that trigger specific regulatory review, that review should not be confused with or allowed to delay the BOA grant administration. (Administrative)

- The State’s substantive assistance in connection with planning (i.e., training, resources, etc.) needs to be re-evaluated and distinguished from purely administrative functions. Planning for coastal areas, which has been a DOS focus prior to the creation of the BOA program, and which automatically triggers significant government involvement at the local (coastal zone review), State (wetlands, floodplain, SPDES, and other permits), and federal (Army Corps) levels, is very different from urban planning which does not necessarily involve any of these water-related regulatory review processes or agencies. While planning resources and expertise should be made available, BOA grant recipients, depending on their level of planning expertise, should have the option of inviting the DOS to play a more substantive role in planning or limiting the DOS role to grant administration. (Administrative)
- To the extent more than one agency is involved with a BOA project, a project coordinator should be designated within the Department of State to assure efficient communication and coordination between agencies and to help secure any required material, reviews and approvals from each agency. (Administrative)



## 5. TAKE FURTHER STEPS TO REDUCE DELAYS.

Involved State agencies should make more predictable the timeframe for government reviews and approvals on BOA projects in order to be more closely aligned with a developer’s time constraints. Developers need assurance that the process will work more quickly if a project is within and is being built consistent with a BOA Plan. Time sensitivity is particularly important when privately owned properties are involved, where taxes accrue and interest payments must be made during the planning, review and development process. And, while affordable housing projects generally have more “patience” and can absorb moderate levels of unexpected delay due to the overwhelming demand for housing in most communities, this is not the case with retail, commercial or industrial end uses which can be greatly impacted by seasonal fluctuations and where real estate decision-making is frequently linked to pre-existing, finite leasing arrangements.

## RECOMMENDATIONS:

- The State should provide for rolling admissions for grant applications (i.e., a publicly announced continuous BOA grant application process). (Statutory or Administrative).
- The State should provide for funding decisions to be made and money distributed as individual projects are determined by the Department of State to be ready to move from one stage to the next, without requiring an amendment to the Legislative MOU. (Statutory or Administrative)
- The State should set a threshold – perhaps \$10,000 – under which there would be no need for competitive bidding, provided that the expenditure is consistent with the original application or the pre-approved budget of the BOA grant recipient. Given all the administrative work that each contract requires, the amount of time and effort needed to adhere to complex procurement rules outweighs the value gained by competitive bidding for relatively small pieces of a project. (Statutory)
- The State should establish a programmatic, streamlined basis for allowing sole source contracts based on a demonstration of unique knowledge, history of working with applicant, and other factors that assure reliability and reasonable pricing. (Administrative)
- The DOS should provide training and capacity building resources to municipalities and community based organizations (CBOs) so that they may effectively use the BOA program for planning in their communities. (Administrative)

## 6. IMPROVE MARKETING OF THE BOA PROGRAM.

Many municipalities and others concerned with community development do not understand how the BOA program works or the tremendous community revitalization opportunity that it presents. There is also a lack of information with respect to the flexibility of BOA resources and the significant assistance the program offers to help communities establish their goals. In addition, the BOA program has gotten off to a rocky start. The seemingly interminable delays and bureaucratic process have had a chilling effect on the level of interest and enthusiasm for the program, and the result has been a curtailing of the number of prospective participants. Not only does the State need to clarify how the program works and the opportunity it offers, but it also needs to promote the program and encourage communities to take advantage of it with assurances that their involvement will not result in a quagmire of process and delay.

- The State should make the BOA program more accessible and consistent with participants' own time constraints by providing for and advertising a rolling admissions process, whereby applications would be accepted and processed continuously, rather than only once a year on relatively short notice. (Administrative or Statutory)

- The DOS should distinguish the BOA program, on its website and elsewhere, from its coastal programs to make it clear that the program is not fundamentally about waterfronts. (Administrative)
- The DOS should place successful applications, actual project documents, and other tools/ educational materials on its website. (Administrative)
- The DOS should prepare a brochure or specific fact sheets about each BOA effort for distribution within the local community and elsewhere to help build credibility for the program and the local BOA plan. (Administrative)
- The State's marketing materials on the BOA program and the documents developed to administer the program (including the generic scopes for the various stages developed by the State for grantees) should reflect one point of contact for the State, instead of the myriad confusing DOS/DEC points of interface. The current documents are daunting to prospective applicants. (Administrative)
- The State should host an annual conference for BOA participants and potential participants where they can exchange information on successful applications and strategies. Separate upstate and downstate conferences might be held to acknowledge that problems and solutions may vary substantially due to geographical, economic or cultural differences between regions. (Administrative)
- The State should create a more formalized network and set of constituencies to support the BOA program and broaden understanding as to its value as an urban planning and smart growth tool. The agencies with responsibilities related to BOAs should undertake thoroughgoing and regular outreach efforts, including the distribution of educational materials and the noticing and provision of seminars and other learning opportunities, to elected officials, educators, media outlets, community leaders, and nonprofit groups organized around housing, economic development, and other urban issues. (Administrative)

## 7. ESTABLISH AN ADVISORY COUNCIL TO HELP DESIGN AND ADMINISTER THE BOA PROGRAM.

The BOA program was jointly crafted through a consensus-building process that involved dozens of participants representing a wide range of expertise and experience, convened to address what have heretofore been deemed intractable problems associated with disinvestment, decay and neighborhood decline. Administration of the BOA program likewise requires the integration of sometimes arcane expertise in such areas as real estate, infrastructure, financing, environment, and local politics. To ensure that the program is implemented in a way that will maximize its effectiveness and help assure that it meets its goals the State should convene a council of experts and practitioners representing a wide range of related interests and specialties to inform its design and administration.

## RECOMMENDATIONS:

- The Governor should create an Advisory Council to help implement the BOA Program. The Council should be staffed by government personnel with planning experience, such as those individuals currently employed by the DOS to advise and assist community and municipal planners. Membership in the Council should include a diverse range of stakeholder representatives from outside of government, including individuals with the following organizational perspectives:

(Administrative)

- |                         |                         |                         |
|-------------------------|-------------------------|-------------------------|
| - Environmental justice | - Municipal             | - Legal (real estate)   |
| - Environmental         | - Building/Development  | - Banking & Lending     |
| - Local community       | (affordable housing)    | (community development) |
| - Community development | - Real estate ownership | - Labor                 |
|                         | - Planning              |                         |

- The Governor should consider a more formal and active role for the existing Brownfields Inter-agency Work Group (Work Group) as a vehicle for exploring linkages and establishing mechanisms for the efficient delivery of information and government resources. As a priority, the Work Group should immediately develop a mechanism for providing “priority and preference” to brownfield sites in an adopted BOA plan, as required in the 2003 Brownfield Law. In addition, the Work Group can be a clearinghouse through which baseline information about each BOA neighborhood might be gathered and presented to BOA grant recipients soon after the grantee is notified of an award. Information could include: i) DEC enforcement history in the area; ii) whether the area is in an Environmental Zone, Empire Zone or other area specially designated for particular treatment or benefits; iii) programmatic information about Empire State Development (ESD) resources that might be applicable; iv) information about resources available through the Department of Transportation (DOT) for street lighting and street repair; and v) information about affordable housing programs administered by the New York State Department of Housing and Community Renewal (DHCR), Affordable Housing Corporation (AHC) and State of New York Mortgage Agency (SONYMA). (Administrative)
- The Advisory Council, in consultation with the Work Group, should consider and recommend ways to implement the “preference and priority” provisions in the 2003 brownfield law, with an eye toward distinguishing the particular needs of urban, suburban and rural communities and the difference between upstate and downstate urban redevelopment obstacles and needs. (Administrative)

- The Advisory Council, with input from the Work Group should consider ways to build momentum for the BOA program. For example, the establishment of a pool of funding resources for BOA implementation would immediately send a strong message of commitment, help build momentum at the local level and begin to encourage property owners to participate in BOA planning activities. (Administrative)
- The Advisory Council, with input from the Work Group, should help the State develop guidance for BOA grantees on establishing their steering committees, including the types of interests that should be represented and a template set of operational procedures for the Steering Committee, including its specific role, its individual members, participation requirements, and how decision-making will be carried out. (Administrative)

## CONCLUSION

It is the Brownfield Opportunity Area program that sets New York's brownfield program apart and positions New York as an innovator in this nation's smart growth movement. As conceived and championed by a range of constituencies committed to the revitalization of our urban cores and the pursuit of sustainable communities, the Brownfield Opportunity Area program offers real hope for reversing the economic and environmental forces that continue to drive our upstate cities from Yonkers to Buffalo into despair and to feed the seemingly inexorable creep of sprawl development. At the same time, it offers the City of New York a ready-made tool to sustainably achieve the Mayor's long term growth goals and address its dwindling land supply while accomplishing environmental justice in low income communities. And in Long Island, Westchester and other wealthy suburban communities, the BOA Program provides a tool that can successfully counter resistance to local development and the growing need for affordable housing.

While this hope remains strong, the experience of dozens of communities seeking participation in the BOA vision under this still very young program has demonstrated a critical need for administrative and statutory correction, in the absence of which the BOA promise is hobbled.

The BOA program has the essential ingredients to put New York on the cutting edge of this country's smart growth movement. If the State acts quickly and thoughtfully to make critical changes and create real momentum, the BOA program will be a signature element in the quest to rebuild New York.

# BROWNFIELD OPPORTUNITY AREA PROGRAM

## TIMELINE

October 2003	Brownfield Law passed by Legislature and signed by Governor Pataki creating Brownfield Opportunity Area Program and authorizing up to \$15 million annually for the BOA program.
April 2004	Notice of BOA grant availability issued by the State
June 2004	Submission deadline for BOA grant applications due to the State.
March 2005	Memorandum of Understanding signed by Governor Pataki, Assembly Speaker Sheldon Silver, and Senate Majority Leader Joseph Bruno. The MOU allotted \$20,250,000 for BOA grants for the 2003-04 and 2004-05 State fiscal years. It designated 53 BOA grant awards totaling approximately \$7.6 million. Grant amounts range from \$19,570 to the Village of Victory in Saratoga County, to \$500,000 to the City of Syracuse.
April 2005	Notice of BOA grant availability for 2nd round issued by the State.
June 2005	Submission deadline for BOA grant applications due to the State. 22 applications were submitted for a total of \$3 million.
March 2006	Notice of BOA grant availability for 3rd round issued by the State.
May 2006	Submission deadline for BOA grant applications due to the State. 30 applications were submitted for a total of \$4.8 million.
January 8, 2007	<ul style="list-style-type: none"><li>- No BOA planning funds distributed to any grantees, (though 27 contracts have been executed.)</li><li>- No MOU signed for awarding of grants on the 22 applications submitted in June 2005.</li><li>- No MOU signed for award of grants on the 30 applications submitted in May 2006.</li></ul>

## ABOUT NPCR

The Co-Directors of New Partners for Community Revitalization, Inc. (NPCR) and many of NPCR's board members were involved in the legislative policy debate that resulted in the BOA program being incorporated into the 2003 NYS Brownfields Law. NPCR has a tremendous interest in working to ensure that the BOA Program is implemented in a manner that is consistent with the statute and addresses the issues that prompted the development of the BOA program. To this end, NPCR has monitored the progress of the BOA Program.

In addition to NPCR Co-Directors, Jody Kass and Mathy Stanislaus, the following senior staff and consultants contributed to the production of this report:

- Jeff Jones
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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 creation of NPCR as an independent nonprofit organization emerged out of the multi-year policy debate that surrounded the passage of brownfields legislation in NYS and the recognition that low and moderate income (LMI) areas could be left behind without an organization whose mission it was to develop programs and policies to address the needs specific to LMI communities. Jody Kass and Mathy Stanislaus, who co-founded NPCR, co-direct the organization with the help of an active and diverse board of directors whose varied perspectives help inform NPCR programs and policies. The decision to create NPCR, with an independent board of directors and a mission that was focused on brownfields and community revitalization in low and moderate income communities, emerged out of a collaborative process. In early 2002, a diverse Technical Advisory Committee was convened to consider what was needed to address NY's thousands of brownfield sites that lay abandoned or under-utilized, primarily in low and moderate income neighborhoods. While NYC had led the country re-building urban America in the 1980s and 1990s with some of the most successful housing programs in the nation, there was a growing realization that the landscape had changed. The portfolio of developable land was dwindling, and what was left was often contaminated from previous uses or illegal dumping. At the same time, the overheated real estate market was leading to rising property values, speculation and displacement. It was determined that there was a need to create new tools and approaches that would respond to this changed landscape. And, there was the recognition of the need to affirmatively address environmental justice concerns by rejecting the notion that only low uses (such as waste transfer stations) can be built on brownfield sites in low and moderate income communities.

## PROGRAM OVERVIEW

New Partners for Community Revitalization, Inc. (NPCR) is implementing an integrated approach to brownfields redevelopment that is designed to provide the tools and capacity necessary to promote community-based productive re-use of brownfields. This multi-pronged initiative was developed through on-the-ground work with environmental justice organizations, community based groups, nonprofit and for profit developers, community lenders, and nationwide research on innovative programs and approaches:

- Brownfields START-UP Pool – Research has revealed that the single, most important factor in advancing a community-supported brownfields reclamation agenda is the availability of good technical assistance and flexible funding (that may or may not get re-paid) that can be invested upfront to reduce the uncertainty of a project to the point where a site is “developable.” The Brownfields Strategic Technical Assistance Resources Targeted to Underutilized Properties Pool (or “START-UP Pool”) has been created to fill this need. Nonprofit developers and nonprofit groups working with for-profit developers are invited to seek assistance being made available through the START-UP Pool for site-specific, community-supported brownfield redevelopment projects.

- NY Metro Brownfields Redevelopment Fund Program – On April 14, 2005, the first public-private, public purpose regional brownfields financing mechanism in the country was launched. The NY Metro Brownfields Redevelopment Fund Program uses public grant dollars to leverage private remediation loans. It was conceived as a tool to help implement community-driven plans, including plans that emerge from the Brownfield Opportunity Areas (BOA) program. The Metro Fund Program links a ready source of capital to finance the riskiest part of a brownfields redevelopment deal with a sophisticated environmental underwriting infrastructure that will allow borrowers to achieve environmental closure in a way that is predictable, quantifiable, transparent, and protective of public health and the environment. The nonprofit Low Income Investment Fund (LIIF) is NPCR’s financial partner for the first round of loans.
- Brownfields Policy and Program Initiatives –The founders of NPCR, Jody Kass and Mathy Stanislaus, were instrumental in translating the real world problem of brownfield sites, particularly in low income urban communities, into legislative solutions; and NPCR is continuing to educate policy makers as the new federal and State brownfields laws and regulations mature. Specifically, technical assistance provided and loans underwritten by NPCR in connection with the Brownfields START-UP Pool and the NY Metro Brownfields Redevelopment Fund Program are being catalogued, and the problems, concerns and solutions that arise during the underwriting and remediation process are being documented. This brownfields data and experience is used to help identify, inform and prioritize the program and policy solutions that NPCR is pursuing.

For additional information about NPCR, see web page: [www.npcr.net](http://www.npcr.net)



## JUNE 12, 2006 ROUNDTABLE DISCUSSION

On June 12, 2006, New Partners for Community Revitalization hosted a Roundtable Discussion with key stakeholders on the Brownfields Opportunity Area program. The purpose of the Roundtable was to identify the opportunities and obstacles associated with the program with an eye towards developing strategies that could aid agencies in ensuring that the BOA program reaches its full potential. The Roundtable Discussion has informed this Report.

### ROUNDTABLE PARTICIPANTS

The following people attended all or part of the June 12, 2006 BOA Roundtable Discussion hosted by NPCR in Albany. The State agency representatives participated as a resource.

A special thank you to Assemblyman Vito Lopez for arranging the space and facilities at the Legislative Office Building, in Albany and for participating in the Roundtable discussion.

A special thank you to Senator Carl Marcellino for kicking off the discussion with his observations and perspectives.

David Ashton, *NYS Department of State*  
Angela Battaglia, *Ridgewood Bushwick Senior Citizens Council, Inc.*  
Gary Bowitch, *environmental counsel to NPCR*  
Karen Diligent, *NYS Department of Environmental Conservation*  
Lee Ilan, *NYC Office of Environmental Coordination*  
Jeff Jones, *NPCR*  
Tawkiyah Jordan, *Youth Ministries for Peace and Justice, Bronx*  
Jody Kass, *NPCR*  
Steve Kearny, *City of Syracuse Economic Development Corporation*  
Robert Kulikowski, *NYC Office of Environmental Coordination*  
Sarah Lansdale, *Sustainable Long Island*  
Assemblyman Vito Lopez, *NYS Assembly*  
Senator Carl Marcellino, *NYS Senate*  
Beth Meer, *NYS Assembly*  
Rick Morse, *NYS Assembly*  
Linda Shaw, *Knauf Shaw, LLP (NPCR board member)*  
Mathy Stanislaus, *NPCR*  
Tim Sweeney, *Environmental Advocates of NY (NPCR board member)*  
Julien Terrell, *TWLC, Buffalo*  
Jim Tripp, *Environmental Defense (NPCR board member)*  
Laura Truettner, *NPCR*  
Val Washington, *NPCR board member*  
Janice White, *True Bethel Baptist Church/True Community Development Corp, Buffalo*  
Elizabeth Yeampierre, *UPROSE, Sunset Park, Brooklyn*

Through the Roundtable Discussion, a list of Opportunities and Obstacles was compiled. NPCR has analyzed these ideas and many have been incorporated into the background and recommendation sections in the Report. Below is the list generated at the Roundtable:

#### OPPORTUNITIES:

- Since communities often do not have long-term or large-scale ideas of what kinds of projects they want, the outreach component of the BOA program can be instrumental in helping communities collaborate and cooperate on a common vision for what they want their neighborhood to look like.
- Opportunities to mitigate environmental justice inequities by providing land for open space, cultural space, and community services.
- By providing funding to community based organizations (CBOs) and if the BOA program would provide incentives to developers, it would create a framework within which many stakeholders, including state agencies, can come together and develop good community plans. This framework is especially necessary in hot real estate market areas where properties are more likely to be developed without community input. (note: no financial incentives for developers currently exist.)
- The BOA program provides an opportunity for municipalities to take a long-term view of their communities and their needs and start to aggregate sites for larger projects. Aggregation of sites is particularly crucial in dense urban areas with strong real estate markets (like NYC) that are running out of land for housing, open space and economic development projects.
- Opportunities to look at brownfield sites from a more holistic perspective, which can lead to ideas for more innovative uses, such as greenways, for these properties.
- Opportunities to plan for and develop community-based projects on brownfields, which are the only remaining properties in some areas since the greenfields have already been developed.
- The BOA program brings traditionally marginalized communities to the table to participate in planning; BOA dollars allow the community to sit at the table with the developers.
- The process of selecting strategic members for a community's BOA Steering Committee can be used to create leverage and excitement; and the committee can help create connections with developers.
- The BOA Program provides resources that will bring more people to the table to participate in planning/redevelopment and so provides a way to identify authentic community desires.
- The BOA Program provides an opportunity to force conversations among CBOs and between CBOs and municipal government as to how brownfields will be developed; this is a critical link in cities with strong real estate markets.
- By bringing communities to the table for planning upfront, the BOA program provides more certainty to developers who will know what projects the community wants and can decide whether or not they want to invest in the project.

- BOA funding is very flexible and can be used to pay for a market analysis, a critical tool for communities who are trying to figure out what type of development will work, particularly in an area where there is a lot of property available and the market is not strong.
- Market analysis can also provide information on which types of properties are suited to which types of uses and this can be helpful in cities that have both high and low density areas; the market analysis provides a tool to direct development to high density areas that some developers might otherwise ignore.
- The BOA program is flexible; it allows CBOs and municipalities to maximize the use of existing information and build on community plans.
- The availability of site investigation dollars makes the program different from other programs.

#### OBSTACLES

- The BOA program has no incentives for private property owners or developers to participate in community collaboration.
- It is difficult to get property owners to the table because neither the cleanup nor the eligibility requirements are clear and both are in the process of being changed by the DEC.
- Private property owners may refuse to participate in planning discussions, even though their properties are located in a study area since the BOA program does not provide any liability protection for them.
- The BOA program is a process only in the most generic sense and is not user-friendly. Between preparation of the application, state review and legislative review, just getting into the program is enormously time-consuming.
- There are widespread difficulties posed by the length of time the process takes. It can be a five-year process from planning to investigation at the end of which the sites have only been investigated, not cleaned up.
- BOA timing does not fit real world developers' time frames, particularly in a strong real estate market.
- The BOA program is ambitious and will only work if state agencies and elected officials make it a high priority, which has not happened in all locations.
- There can be difficulties when local government, whose assistance is needed to obtain technical resources such as GIS, is unresponsive.
- Marketing/packaging brownfield sites for potential developers is difficult and many CBOs do not have the requisite experience.
- There are difficulties posed by the lack of technical expertise and the inability to gain access to resources, such as GIS, that are needed to complete the application and submit it by the deadline.
- Stakeholders, including government officials, the community and private owners need market-specific education on opportunities for development.

- There are problems with the interface between the Superfund Program and the Brownfield Cleanup Program. It is difficult to get information on Superfund sites and future planning for Superfund sites is even more difficult. For example, a ROD that calls for a cap that cannot be breached significantly impedes future planning for that site and, as a result, may affect planning for large parts of the BOA.
- The BOA program has no incentives to get Superfund site owners involved in the BOA planning or the BCP.
- There is a lack of coordination between the BOA program and the Environmental Restoration Program, BCP and the US EPA on projects.
- Although there is no hard and fast rule, it has been reported that there have been some difficulties in meeting the perceived minimum acreage requirement.
- Lack of access to funding, particularly for first round recipients, is precluding work on some projects.
- The BOA program is not structured for early successes, which would help build momentum.
- The legislative MOU process is not responsive to the needs of communities. Dollars for the BOA program should be appropriated each year so funding does not get caught up in the Albany budget process.
- The statutory provision allocating preference and priority for projects in BOA designated areas has no teeth.
- There is a concern that success of the BOA program may drive gentrification in strong real estate market areas where properties are likely to get developed for high end housing.



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