



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

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## Testimony of

### ***New Partners for Community Revitalization, Inc.***

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Thank you Chairmen Farrell and Johnson and members of the Assembly Ways and Means and Senate Finance Committees for the opportunity to testify here today, and for your consideration of our comments. I am Val Washington, Senior Policy Analyst for New Partners for Community Revitalization (NPCR), a nonprofit organization which was 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 observations and recommendations we offer today are based on our own on-the-ground work in this area and the obstacles we have encountered in the implementation of the 2003 New York brownfield law as both an environmental cleanup and economic development tool. The most serious obstacles are directly related to the budget, specifically the brownfields tax credits available to participants in the Brownfields Cleanup Program (BCP) under the Environmental Conservation Law, and the funding for the Brownfield Opportunity Area (BOA) Program under the General Municipal Law.

**Background.** Before getting into specifics, I have a few general comments about the fiscal aspects of the comprehensive brownfield law passed in 2003. Most of the staff of NPCR, including its co-directors and myself, its consultants, and many members of the NPCR Board of Directors participated in the nearly decade long effort to see a brownfields law enacted in New York. What made the debate so complicated is the fact that brownfields pose a number of problems that go well beyond some of the more obvious environmental concerns, such as toxic exposure, to include some less obvious environmental concerns, such as sprawl and sustainability, as well as a range of economic and social issues, including environmental justice, the viability of Upstate cities, the absence or displacement of low-income neighborhoods in our wealthier communities, and the need for housing to meet a growing downstate population. The resulting 2003 legislation reflects some of this complexity in the establishment of cleanup options and tax credits for those that redevelop brownfields and in the creation of the BOA program to promote planned urban revitalization. However, our experience with the law is that it is woefully underutilized, has had some unintended negative impacts, and requires significant refinement, beginning with its fiscal provisions. With correction, the law can be used to promote the cleanup of thousands of potentially dangerous parcels of land, revitalize communities, inspire thoughtful and sustainable development, and attract critical private dollars needed for the economic rebirth of our Upstate urban centers.

**Brownfield Tax Credits.** The most glaring need for refinement is in the awarding of tax credits for brownfields cleanup and development. The program attracted controversy at the outset when it appeared that some very expensive high-profile development projects in New York City might receive upwards of a hundred million dollars in refundable tax credits from the State, a level of program cost that could not have been anticipated in the drafting. The problem was - and is - that any site that qualifies for participation in the Brownfield Cleanup Program is eligible for tax credits as-of-right, regardless of what proportion of the developer's costs are related

to the cleanup of contamination and regardless of whether the property involved actually needs incentives to attract a developer. To avoid the kind of cost the state would face if, for example, the developers of the \$850 million New York Times building off Times Square were to be granted the estimated \$170 million in brownfields tax credits, the Department of Environmental Conservation tightened the eligibility requirements for entry into the program. The statutory definition of “brownfield,” which is “any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant,” was clearly meant to be broad, but fiscal prudence has forced DEC to interpret it narrowly, applying a set of guidance criteria on a case-by-case basis.

While this administrative fix may have saved the state hundreds of million dollars, it must be seen as a stop-gap measure because it has created a number of its own insidious problems. One problem is that many sites that belong in a cleanup program because they contain levels of contamination above existing health-based cleanup standards are left in limbo without a government program to oversee remediation or award liability protection to owners and builders who eliminate health threats. And, DEC’s flexibility in interpreting the statute is very limited. It cannot, for example, vary the amount of tax credits available to project participants based on need, cost of remediation, project location, community support or other criteria. Even if it had authority to do so, it is the wrong agency to be concerned with tax incentives – DEC’s expertise is in environmental protection, not economic development or social policy.

What is needed is a statutory amendment to more thoughtfully target incentives for brownfield redevelopment. In the first place, eligibility for participation in the brownfield cleanup program should be de-linked from tax credits and based solely on environmental considerations. Once a site is accepted into the program, a separate set of criteria should apply to the awarding of financial assistance. We support the use of tax credits to encourage the cleanup and reuse of brownfields, but more needs to be done for economically devastated communities that cannot compete for economic development activity without further help. We suggest that the current tangible property component of the brownfield tax credit be offered on a sliding scale basis, with the highest level of award granted where the cost of remediation is proportionately higher, and the smallest awards going to those projects for which the cleanup costs represent a very small fraction of the total cost of redevelopment. We would also strongly urge that the most generous awards be given to site owners and builders who work cooperatively within an approved Brownfield Opportunity Area plan, which I will discuss more fully in a moment.

In any event, both sets of criteria – those for eligibility in the brownfield cleanup program, and those for the awarding of incentives – should be clear and sufficiently definitive to fully advise potential participants of their likely status and the incentives that would apply to their particular situation. Any protracted or case-by-case analysis makes it difficult for a site owner or developer to make the significant up-front investment that a remediation and development project usually requires.

**The Brownfields Opportunity Area Program.** The second area requiring reform is the Brownfield Opportunity Area Program, operated by DEC in conjunction with the Department of State. This is the most innovative piece of the 2003 brownfield Law, and holds tremendous promise as an urban revitalization and smart growth tool. The BOA Program seeks to encourage community planning in neighborhoods burdened by brownfields by providing funds to help assess the conditions fueling abandonment and decay and to create a community vision that subsequent cleanups and redevelopment projects will help fulfill. The BOA approach is intended to create value, and, thus, 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 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. Part of the problem is that the particular pot of money that is the source of BOA planning grants is subject to a budgetary requirement for a Memorandum of Understanding among the State's leaders. Only one MOU has been agreed upon thus far - in March of 2005, 53 grants for BOA activities were approved. Since then, no new MOU has been signed, leaving another 52 BOA projects on hold.

But the MOU constraint, which has been removed in the Governor's proposed budget for 2007-08, is just one of the three major obstacles standing in the way of the BOA program. The second impediment is in the inefficient and costly dual agency construct, which charges the implementing agencies with tasks that illogically expand their traditional roles. For example, it makes no sense for the DEC to be involved in economic development and planning decisions, with which it has no experience or expertise. Every step in the BOA process is plagued by delay and uncertainty with each project proceeding through a series of planning and implementing stages, and each stage requiring a new application and sign-off by both agencies. Then, once an MOU is signed, contracts for the use of the awarded funding must be negotiated and signed - again by the two executive agencies. Only then can a grantee submit a voucher for reimbursement or for an advance - years after acceptance of the initial application. Three years after the BOA program became operational, only one of the original 53 communities approved for funding has received any of the promised financial support.

The third obstacle to the BOA program has to do with the participation of private owners of brownfield properties in the BOA planning process. There is nothing in the law and nothing in the budget to encourage owners of these sites to "come to the table" and work with the community to design the BOA vision. As mentioned, the developer of the brownfield will get the same generous tax credits whether the project meets the community needs or not - even if the project is out-sized, noxious, or otherwise incompatible with a community vision. And, logically, there is no reason why an owner or developer of a brownfield site would ever bother engaging with community members or the local government when he or she can get tens of millions of dollars in brownfield tax credits while ignoring the desires and needs of local residents and businesses. Thus, in the absence of targeted incentives for cooperation, the purposes of the BOA program are readily undermined, and both community and public investment is lost.

This is not the way the program was supposed to work. A clear indication of the legislative intent to reward site owners who cooperate in the development and implementation of a BOA plan is found in a statutory provision that states:

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.

It is easy to imagine how various existing government programs and functions could be employed to support and build on community revitalization efforts while remaining true to their established missions and eligibility criteria. For example, it makes perfect sense to give priority to infrastructure repair and improvement in neighborhoods that are making serious revitalization efforts. It also makes sense to reward landowners for their cooperation with such efforts by offering enhanced services, financial incentives and other government resources. Unfortunately the language in the statute is not mandatory and there appears to be no mechanism or funding for pursuing the cooperation of other agencies and other levels of government.

Over the past four years, the Legislature has appropriated a total of \$60 million dollars for grants to BOA participants and other brownfield purposes – all subject to the MOU requirement. Only about \$9 million of this amount has been allocated, and it appears from the reappropriations in the Governor's proposed budget that less than \$300,000 has actually been spent. The fact that \$50 million remains unallocated is a strong indication that the program has not been a priority, despite the pressing need to revitalize our upstate cities, create new housing downstate, and improve the quality of urban life in a way that protects low-income communities from displacement and helps control unhealthy patterns of sprawl development.

Without budgetary changes the BOA program cannot begin to fulfill its substantial promise. We urge the following amendments and initiatives:

- Re-assign brownfield tax credits to encourage developers to work with community organizations and municipalities, by providing a 10% bonus to projects built consistent with a BOA plan and by denying any credits to inconsistent projects (such as the 8% bonus currently available for brownfields in Environmental Zones, which are 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.
- Eliminate the duplicative bureaucracy that slows decision-making and dilutes accountability. The BOA program and its funding should be placed in a single agency that does not rely on another agency's budget or oversight. 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.
- Allocate the accumulated pool of money already appropriated to invigorate, expand and expedite the BOA program. In particular, the "priority and preference" language should be expanded to include all types of resources in addition to financial incentives, and must be given real meaning, with a careful analysis of available federal, state and local programs that can be employed to provide resources to community participants in the creation and implementation of BOA plans. The analysis must then be followed by inter-governmental and interagency coordination and education efforts to give BOA's the priority treatment that will make them both attractive and functional.
- Create a funding protocol that allows grant money to flow in a predictable and timely manner and provides BOA grant recipients with assurance that funding will be available to complete the multi-year planning and designation process without unjustified and debilitating interruption.

**Conclusion:** There are thousands of contaminated and abandoned parcels of land across the State that pose serious economic development and environmental challenges for New York. The programs created in the 2003 Brownfields Law to address these problems are fundamentally flawed in ways that were not readily foreseeable at the time of the law's passage. The flaws are now all too apparent, with taxpayer dollars being misspent and innovative economic development programs strangled for a lack of resources and commitment. We urge you to make the changes that will allow these programs to work.

Thank you again for the opportunity to testify here today. We offer our assistance and support in the improvement and success of the state's brownfields programs.