

# ADVANCING PUBLIC HEALTH AND SUSTAINABILITY THROUGH BROWNFIELDS REDEVELOPMENT IN NEW JERSEY:

A Handbook for Local Officials and Communities



October 2010

## TABLE OF CONTENTS

<b>Chapter One</b>	<b>INTRODUCTION</b>	1
	The Benefits of Brownfields Redevelopment	2
	The Role of Municipalities in Brownfields Redevelopment	3
	Scope and Structure of the Handbook	3
<b>Chapter Two</b>	<b>MUNICIPAL AND COMMUNITY COLLABORATION FOR EFFECTIVE BROWNFIELDS REDEVELOPMENT</b>	5
	Strategic Considerations for Community Collaboration	5
	Key Resources for Community Collaboration	8
<b>Chapter Three</b>	<b>COORDINATING WITH STATE AGENCIES AND ACCESSING STATE AND FEDERAL BROWNFIELDS RESOURCES</b>	10
	Strategic Considerations for Working with State Agencies and Accessing Resources	11
	Key Federal and State Resources for Brownfields Redevelopment	13
<b>Chapter Four</b>	<b>IDENTIFYING POTENTIAL BROWNFIELD PROPERTIES</b>	14
	Strategic Considerations for Identifying Brownfields	14
	Resources for Identifying Brownfields	16
<b>Chapter Five</b>	<b>EVALUATING ENVIRONMENTAL CONDITIONS AT BROWNFIELDS</b>	17
	Strategic Considerations for Evaluating Environmental Conditions	17
	Resources for Evaluating Environmental Conditions	22
<b>Chapter Six</b>	<b>IDENTIFYING FUTURE USES FOR BROWNFIELDS</b>	25
	Practical Considerations for Identifying Reuse Options	26
	Key Resources for Redevelopment to Promote Public Health	29
<b>Chapter Seven</b>	<b>FACILITATING BROWNFIELDS CLEAN-UP</b>	32
	Strategic Considerations for Brownfields Cleanup	37
	Resources for Brownfields Cleanup	38
<b>Chapter Eight</b>	<b>WORKING WITH THE PRIVATE SECTOR TO REDEVELOP BROWNFIELDS</b>	40
	Strategic Considerations for Facilitating Private Investment in Brownfields Redevelopment	41
	Key Resources for Facilitating Private Financing	44

<b>Appendix A</b>	<b>SELECTED STATE AND FEDERAL AGENCIES</b>	46
	State Agencies	46
	Federal Agencies	47
<b>Appendix B</b>	<b>KEY FEDERAL AND STATE BROWNFIELDS FUNDING AND ASSISTANCE PROGRAMS</b>	49
	New Jersey State Programs	49
	Federal Programs	52
<b>Appendix C</b>	<b>BROWNFIELDS CASE STUDIES</b>	55
	General	55
	Specific Re-use Options	55
	Specific Types of Properties	55

## CHAPTER ONE

### INTRODUCTION

For years, parents in the town of Kearny, New Jersey had to walk their children across active rail lines to access a park. Along the way, some of these families would also pass a boarded-up tool and die shop. Abandoned for over 20 years, the shop was a blight on the surrounding residential neighborhood. Over the course of several years, officials from the town, county, and state worked together with community members to clean up the site and create a much-needed toddler park, transforming an industrial eyesore into green space.<sup>1</sup>

Brownfields come in all sizes and types – from former service stations, machine shops and dry cleaners, to warehouses, parking lots, and large factories. But they share a basic characteristic: they are under-utilized and often abandoned commercial and industrial sites where real or perceived contamination is discouraging redevelopment. Some brownfields are not highly visible, but many contribute directly to neighborhood blight and decay.

The term “brownfield” was coined in the early 1990s and is now firmly established in the vocabulary and practice of community economic development. Over the past decade there have been tremendous efforts on the part of policy makers, government agencies, private business, non-profits, and community residents to promote the cleanup and redevelopment of brownfields. Many informational and financial tools now exist at the federal, state, and local levels to help transform these sites and revitalize communities. Using these resources, numerous localities in New Jersey and across the country have succeeded in overcoming the often significant impediments to brownfields redevelopment.

While substantial progress has been made, much more work remains. EPA estimates that there are about 450,000 brownfields in urban, suburban, and rural areas throughout the U.S., totaling 5 million acres of abandoned industrial sites. An estimated 10,000 brownfield sites are in New Jersey – the third smallest, but most densely populated, of the states. A recent study found that there are 10 former gas stations for every one station operating in Trenton, with 19 percent of those former stations lying vacant. In the New Jersey city of Plainfield, there are 28 former gas stations for every one operating, and 26 percent of the former stations remain as unproductive land.<sup>2</sup>

---

<sup>1</sup> See Hudson County (NJ) Brownfields Pilot Program, <http://www.hudsonbrownfields.org/site-k-elmst.php>.

<sup>2</sup> L. Yasenchak, What We Know About the Ubiquitous Brownfield: A Case Study of Two New Jersey Cities and Their Gas Stations, ENVIRONMENTAL PRACTICE 11 (3) (Sept. 2009).

### ***The Benefits of Brownfields Redevelopment***

Regardless of the scope of a brownfields initiative – whether it focuses on a single property or takes a neighborhood-wide approach – the benefits to local communities in New Jersey can be substantial. The creative reuse of even a small site can improve quality of life and property values in the immediate neighborhood. Comprehensive planning for the reuse of multiple brownfields can transform the economic and social character of an entire community.

- *Economic growth.* Brownfields redevelopment offers the possibility of far-reaching economic benefits. The establishment of new businesses and other enterprises on the site increases the tax base and generates jobs. Overall revitalization efforts, including cleanup and the creation of open space and other community amenities, can raise property values in the surrounding areas and generate spin-off development.
- *Open Space and Natural Resource Protection.* Putting land in developed areas back into productive use takes advantage of existing infrastructure, reduces suburban sprawl, and preserves green spaces. Studies by the U.S. Environmental Protection Agency (EPA) have shown that redeveloped brownfield sites tend to have greater location efficiency, resulting in a 33 to 57 percent reduction in vehicle miles traveled associated with these sites and a reduction in air pollution emissions, including greenhouse gases.<sup>3</sup> Brownfields redevelopment is a critical component of New Jersey’s smart growth agenda, as expressed in the State Plan and the numerous state programs promoting smart growth policies and practices.
- *A Healthier Community.* Cleaning up brownfields addresses a variety of threats to public health. Residents may be exposed to pollutants on the site that are contaminating the air, soil, and water in the surrounding area. Open pits and unsafe structures can be hazardous to children and others who have access to the site. Trash and general dilapidation contribute to blight conditions, crime, and deterioration of the social fabric of a neighborhood. Beyond the cleanup of contamination, brownfields redevelopment offers a vehicle for advancing community health by establishing health clinics, parks, and other needed services.

---

<sup>3</sup> U.S. EPA, Brownfields Program Benefits, <http://epa.gov/brownfields/>.

### ***The Role of Municipalities in Brownfields Redevelopment***

New Jersey municipalities<sup>4</sup> are critical players in moving brownfield properties into productive use. For properties that a municipality owns or acquires, the local government may take the lead in assessment and clean-up, and may redevelop the properties for public use or market the sites for private development. Municipal programs are also vital for jump-starting development of privately-owned brownfields by removing regulatory barriers and leveraging public investment. A key objective of a municipal brownfields program is to reduce the costs and uncertainties presented by brownfields, in order to make private development economically feasible. In significantly disadvantaged communities, this may require considerable government support in the form of funding and technical assistance. Other properties may need only a small, strategic public investment to make brownfields redevelopment a viable option.

Brownfields projects have the potential to reap tremendous benefits for a community, but they require long-term commitment. Careful planning is important in order to consider not only how properties should be redeveloped or marketed for private development to serve community needs, but also what municipal resources are available for bringing about cleanup and redevelopment. Depending on the scale of the initiative, this requires technical expertise, as well as a commitment of funding and staff support, on the part of the municipality.

Brownfields redevelopment offers a framework within which municipalities can join together with community stakeholders to create a more sustainable future. A core function of a municipal brownfields program is to ensure that redevelopment serves community goals, and that these goals are developed with the meaningful participation of those most affected – neighboring residents and other community members. This process of shaping a vision for brownfields redevelopment presents an exceptional opportunity for identifying the unmet needs for improving residents' health and wellbeing, and for determining how existing brownfields programs and other resources can be tapped to meet those needs.

### ***Scope and Structure of the Handbook***

This handbook presents information to assist New Jersey municipalities and community members in advancing brownfields redevelopment and improving community health. The handbook emphasizes the central role played by municipal agencies and officials. Nevertheless, an important premise of the handbook is that an effective brownfields initiative requires the close collaboration of municipal officials and community stakeholders, particularly those who live in the affected areas.

The handbook is organized into the following chapters, which describe key steps that are involved in a brownfields redevelopment project. The precise nature of the municipal

---

<sup>4</sup> Municipalities include cities, towns, townships, villages and boroughs. See New Jersey Statutes Annotated N.J.S.A. 40:42-1. The information provided in this handbook is also relevant to counties, which may play the same role as municipalities in activities relating to brownfields redevelopment in unincorporated areas.

role in facilitating these steps will vary depending on the type of site, community resources and priorities, and many other factors.

- Facilitating Municipal and Community Collaboration
- Coordinating with State Agencies
- Identifying Brownfields
- Evaluating Environmental Conditions at Brownfields
- Identifying Appropriate and Best Uses for Brownfields
- Cleaning Up Brownfields
- Working with the Private Sector to Redevelop Brownfields

Each chapter provides general background and strategic considerations for taking action, including information about recent changes in New Jersey law relating to brownfields cleanup and redevelopment. Each chapter also provides a listing of key federal and state resources that are currently available.

It is important to note that the brownfields process is complex and seldom linear. The information presented in the handbook for one stage of the process may come into play at another stage as well. Thus, some information is repeated in multiple chapters or cross-referenced. In particular, references to specific federal and state funding programs appear in multiple chapters, where those resources are available to fund multiple aspects of the brownfields process. Appendix B contains a listing of all of the federal and state brownfields resources noted throughout the handbook. Appendix A provides contact information for these agencies.

## CHAPTER TWO

### MUNICIPAL AND COMMUNITY COLLABORATION FOR EFFECTIVE BROWNFIELDS REDEVELOPMENT

Strong involvement and support from those who will be affected by the process are crucial elements of a successful brownfields redevelopment initiative. Community residents and groups who have experienced the negative health, economic, and environmental effects of contaminated and abandoned sites have an important stake in how a site is redeveloped. Thus the process should provide an opportunity for those stakeholders to weigh in on – and become invested in – the redevelopment effort, to ensure that the ultimate result advances the interests of community residents, and not only the local government and developers. This includes consideration of needed public amenities and services, as well as planning to avoid problems such as displacement of existing residents and community services.

On a practical level, support from community stakeholders can also help spur municipal agencies to act and can give projects the initial political push they sometimes need to get underway. Grassroots support can also help secure project funding from competitive public funding programs and provide greater certainty to potential developers. An effective process for collaboration among municipal officials and community members can help avoid delays and interruptions to the redevelopment process. Including a broad range of stakeholders early on can reduce the risks to private developers and encourage their involvement in a project.

New Jersey has established public notice and participation requirements related to site cleanup at brownfields and other properties (see Chapter Seven).<sup>5</sup> In addition, state brownfields funding and assistance programs may require community participation or give priority to applicants who demonstrate community involvement. The state's Brownfields Development Area program, for example, uses selection criteria that include "level and breadth of community support" and the "clarity of community vision" for the project.<sup>6</sup> The U.S. Environmental Protection Agency's (EPA's) Brownfields Assessment Grants program includes "Community Engagement and Partnerships" as a ranking criteria, and applicants must indicate how they will engage the community, the role of community organizations, and the partnerships that have been established.<sup>7</sup>

#### *Strategic Considerations for Community Collaboration*

---

<sup>5</sup> N.J. Administrative Code 7:26E-1.4.

<sup>6</sup> See NJ Dept. of Environmental Protection, 2009 Brownfields Development Area Application Guidance, available at: [http://www.nj.gov/dep/srp/brownfields/bda/bda\\_application\\_guide.htm](http://www.nj.gov/dep/srp/brownfields/bda/bda_application_guide.htm).

<sup>7</sup> See U.S. EPA, Final FY2010 Brownfields Assessment Grant Guidelines, available at: <http://www.epa.gov/brownfields/applicat.htm>.



► **Engaging in *early and ongoing* dialogue with the community.** As partners in the redevelopment process, community members and local officials should begin working together early in the process to develop a solid foundation for dialogue. At an early stage in redevelopment planning, municipal agencies can both *solicit* community concerns and interests and *convey* municipal goals and information about brownfields redevelopment. Early input and collaboration is particularly important because initial decisions – *e.g.*, about which brownfield sites to focus on and about the appropriate and best uses of those sites – will affect the remainder of the redevelopment process. Similarly, community residents should be informed about and included in discussions about site cleanup, as those decisions can affect community safety and health over the long term and may involve long-term monitoring and oversight of cleanup measures.

Municipal and community collaboration throughout the brownfield redevelopment process is vital to educate the community, ensure that residents are not taken by surprise, and sustain project support. To achieve effective participation, it may not be adequate to rely on standardized mechanisms such as routine public hearings and comment periods. Municipal officials may need to be more proactive and to tailor outreach to meet the needs of those residents and stakeholders most affected – for example, by advertising meetings on local access cable channels, holding public meetings at times that accommodate work schedules, providing information in languages other than English, and engaging neighborhood groups through their meetings or listservs.<sup>8</sup>

► **Reaching out to a wide array of community members and stakeholders.** In building a framework for collaboration on brownfields projects, it is important to reach out to a broad cross-section of the community, including those who may be critical of the process. If some groups feel they have been left out of the process, time and resources will likely need to be diverted later to address their concerns. The New Jersey State Plan calls for neighborhood revitalization planning to include “participation from families, neighborhoods, schools, civic-, community- and faith-based organizations, for-profit and nonprofit groups and businesses, municipalities, utilities, school districts, counties and state agencies.”<sup>9</sup> In addition to working with grassroots civic and religious leaders, municipal officials can collaborate with state and local non-governmental organizations (NGOs) that work on social, environmental, and economic development issues. Those

---

<sup>8</sup> For more information on community participation in brownfields redevelopment, see U.S. EPA Region 4, *Revitalizing Southeastern Communities: A Brownfields Toolkit*, available at <http://www.epa.gov/region4/brownfieldstoolkit/index.html>; Nat’l. Assn. of Local Government Environmental Professionals and Northeast-Midwest Institute, *Unlocking Brownfields: Keys to Community Revitalization*, available at: <http://www.resourcesaver.com/file/toolmanager/CustomO93C337F65023.pdf>; Nat’l Center for Neighborhoods and Brownfields Redevelopment, *Building Capacity: Brownfields Redevelopment for Community-Based Organizations* (2008), available at: [http://policy.rutgers.edu/brownfields/events/Manual\\_Building\\_Capacity.pdf](http://policy.rutgers.edu/brownfields/events/Manual_Building_Capacity.pdf). Community involvement is also addressed in the *Standard Guide to the Process of Sustainable Brownfields Redevelopment*, published by the American Society for Testing and Materials, available for purchase at: <http://www.astm.org/Standards/E1984.htm>.

<sup>9</sup> *New Jersey State Plan* (“Statewide Policies”) 129, available at: <http://www.state.nj.us/dca/divisions/osg/plan/>.

organizations can help communicate with community residents and can also bring technical expertise to a brownfields initiative.

### **New Jersey Organizations Working on Brownfields Issues**

In addition to local organizations, there are several state-level NGOs and academic institutions in New Jersey that can provide technical assistance to municipal officials and community stakeholders on brownfields redevelopment issues.

#### **National Center for Neighborhood and Brownfields Redevelopment**

<http://policy.rutgers.edu/brownfields/>

Housed at the Rutgers University E. J. Bloustein School of Planning and Public Policy, this Center researches issues related to smart growth, sprawl reduction, green building, housing, and urban revitalization. It also works with community leaders to build capacity for successful neighborhood revitalization planning.

#### **New Jersey Institute of Technology (NJIT)**

<http://www.njit.edu/tab/>

NJIT's Technical Assistance to Brownfield (TAB) Communities program serves as a free independent resource to communities, regional entities, and nonprofits who have or are seeking to obtain EPA brownfields grants. The TAB program provides guidance throughout the cleanup process, including guidance in preparing grant applications and selecting consultants, explanation of environmental laws and regulations, advice on project management, assistance in developing financing strategies, and help in galvanizing community engagement.

#### **Housing and Community Development Network of New Jersey**

<http://www.hcdnj.org/>

The Housing and Community Development Network of New Jersey is a statewide association of more than 250 affordable housing and community development corporations (CDCs), individuals, and other organizations that support the creation of housing and economic opportunities for low- and moderate-income New Jersey residents. The Network provides CDCs with targeted technical assistance and educational programs, pursues resources and improved public policies on their behalf, and conducts research on ways to enhance the impact and effectiveness of the community development sector.

#### **New Jersey Future**

<http://www.njfuture.org/>

New Jersey Future is a statewide research and policy group advocating an approach to development that protects open lands and natural resources, revitalizes neighborhoods, keeps housing affordable, and provides more transportation choices. The organization hosts an annual redevelopment conference, presents awards for smart growth, and produces a wide range of reports and other materials on redevelopment issues.

► **Creating an interagency municipal brownfields team.** Brownfields projects are long-term undertakings that involve multiple offices within the local government. An interagency municipal brownfields team coordinates administrative and technical

knowledge, making it easier for community residents, private and non-profit developers, and other stakeholders to work with local agencies. An interagency team can also expedite projects by coordinating multiple local approval processes. There are a number of different models for interagency teams, but it is common to have participation from the economic development, environmental, planning, finance, and legal departments, as well as the mayor's office.<sup>10</sup>

In New Jersey's Passaic County, the Brownfields Assessment Program is implemented by the staff of the Department of Economic Development, in conjunction with the Departments of Health, Engineering, and Planning. The county also coordinates all activities with key county committees – the Smart Growth Committee, the Comprehensive Economic Development Strategic Committee, and the Open Space and Farmlands Preservation Committee.<sup>11</sup>

► **Establishing a stakeholder taskforce to facilitate community participation and outreach.** A community task force or workgroup consisting of diverse community stakeholders and municipal officials can be an effective mechanism for achieving the key elements for effective community outreach and participation. Such a task force also provides a forum for municipal and community leaders to work together with developers, lenders, and property owners, who will have key insight and practical information about the redevelopment potential for brownfield properties. Whether established for a specific brownfields project or for a larger municipal brownfields initiative, a community stakeholder task force can provide continuity over different stages of the redevelopment process.

The city of Paterson, New Jersey, is one of many that have taken this approach in its brownfields initiatives. Using funds from an EPA Brownfields Assessment grant, the city established the public-private Paterson Environmental Revitalization Committee (PERC) to both educate and involve the community in the brownfields process.<sup>12</sup>

► **Working with Consultants.** Brownfields projects typically involve consultants who provide site assessment, cleanup, and redevelopment services. Consultants with experience in brownfields redevelopment can also help municipalities establish their brownfields program and create an effective approach to community participation. Consultants may also be able to assist municipal agencies in navigating funding sources and preparing grant applications. Chapter Five provides more information about hiring a consultant.

### ***Key Resources for Community Collaboration***

---

<sup>10</sup> See generally National Association of Local Government Environmental Professionals and Northeast-Midwest Institute, *Unlocking Brownfields: Keys to Community Revitalization*, 115-116, available at: <http://www.resourcesaver.com/file/toolmanager/CustomO93C337F65023.pdf>.

<sup>11</sup> Passaic County Brownfields Assessment Program ("Program Overview"), available at: <http://www.passaiccountynj.org/Departments/window-economicdevbrownfieldinfo.htm>.

<sup>12</sup> Jessie Torrez, "Paterson's U.S. EPA Pilot Grant and PERC," in *Revitalization through Brownfield Redevelopment: How Paterson is Succeeding and You Can Too!* (Env. Law Inst., 2007), available at: [http://www.eli.org/program\\_areas/innovation\\_governance\\_pubs.cfm](http://www.eli.org/program_areas/innovation_governance_pubs.cfm).

Appendix B contains a listing of the principal state and federal financial assistance programs that are available to fund the various stages of a brownfield redevelopment initiative. Municipalities may be able to tap some of those resources to support early redevelopment planning and collaboration efforts. For example, EPA's *Brownfields Assessment Grant* program awards funding to governmental entities for brownfields assessments, and also for planning and community involvement activities related to brownfield sites. Municipalities may apply for a site-specific grant or a community-wide assessment grant. The total request is limited to \$400,000, unless a waiver is requested due to the extent of contamination at a specific site.

Certain state programs may be available to support collaborative development of a neighborhood or redevelopment plan. One example is the *Urban Site Acquisition Program*, a revolving loan fund administered by the New Jersey Redevelopment Authority (NJRA) for the acquisition, site preparation, and redevelopment of properties that are part of a larger urban redevelopment plan in NJRA eligible communities. The NJRA's *Environmental Equity Program (E<sup>2</sup>P)* also makes loans to finance the pre-development costs related to brownfields development, including planning activities.

In addition, municipalities and non-profit organizations working together to promote local employment in their brownfields initiative may wish to pursue funding through EPA's *Brownfields Job Training Grant* program. This annual EPA grant competition provides funding to recruit, train, and place unemployed and under-employed residents of brownfields-impacted communities. The focus is on teaching environmental assessment and cleanup job skills, helping residents living near brownfield sites to secure full-time employment in the environmental field.

## CHAPTER THREE

### COORDINATING WITH STATE AGENCIES AND ACCESSING STATE AND FEDERAL BROWNFIELDS RESOURCES

Numerous state agencies in New Jersey are involved in brownfields redevelopment. As projects move from planning to cleanup and redevelopment, they will likely engage with many of these state offices. In addition to overseeing environmental and other legal requirements, the state offers technical assistance and numerous types of financial assistance for all stages of the brownfield redevelopment process. Knowing the types of financial incentives available and their eligibility requirements is critical to making decisions about the feasibility and desirability of different brownfield redevelopment options. Local officials and community members can save time and maximize resources if they understand the state's role and make contact with state officials during the initial planning stages of a project.

Contact information for federal and state agencies involved in the brownfields redevelopment process is provided in Appendix A. Following are four of the key state agencies:

- The *New Jersey Department of Environmental Protection (NJDEP)*. Within the NJDEP, the **Site Remediation Program** administers the state laws governing contaminated site cleanup. The **Brownfield Remediation & Reuse Element (BRRE)** is the program charged with coordinating the agency's remediation and reuse efforts at brownfield sites, including piloting innovative approaches to streamline the revitalization process and administering various incentive programs. Another NJDEP unit, the **Office of Planning and Sustainable Communities**, works with state agencies, regional entities, local governments and other groups to incorporate sustainable development principles into all levels of land use and environmental planning.
- The *New Jersey Department of Community Affairs (DCA)*. Within the DCA, the **Office of Smart Growth (OSG)** coordinates planning throughout New Jersey to protect the environment and guide future growth. The office implements the goals of the State Development and Redevelopment Plan and provides field support to local governments and the public on planning issues. OSG has a brownfields program which helps coordinate brownfield activities among state agencies.
- The *New Jersey Redevelopment Authority (NJRA)*. NJRA is a state redevelopment financing authority that customizes project financing for redevelopment projects. The NJRA's financing programs are available to eligible municipalities, pursuant to state law. The NJRA also maintains the Brownfields SiteMart, a free online listing of known brownfield sites in New Jersey.
- The *New Jersey Economic Development Authority (NJEDA)*. The NJEDA houses a large variety of programs and services designed to provide technical assistance and access to capital for economic development projects within the state, including key financing mechanisms for brownfields redevelopment.

### **New Jersey Laws related to Brownfields Cleanup and Redevelopment**

New Jersey law governs cleanup at the more than 10,000 contaminated sites within the state that do not fall under the jurisdiction of the federal Superfund program. New Jersey law also establishes the core elements of the state's brownfields programs.

- New Jersey's *Spill Compensation and Control Act* was the first of its kind in the U.S. and was a model for the federal Superfund law. The Act creates a system of liability for hazardous waste cleanup, establishes a state fund for cleanups, and authorizes the state to create a priority list and take certain actions relating to site cleanup. N.J.S.A. 58:10-23.11.
- The *Industrial Site Recovery Act* requires owners or operators of an industrial establishment planning to close or transfer ownership or operations to first notify the NJDEP and then obtain the required approvals for site remediation as provided under state law. N.J.S.A. 13:1K-6 *et seq.*
- The *Brownfield and Contaminated Site Remediation Act* establishes the process and standards for the remediation of contaminated sites in New Jersey. The law also establishes the framework for the state brownfields program – creating a Brownfields Redevelopment Task Force, requiring development of a state inventory of sites, and providing state financial assistance for brownfields cleanup and redevelopment. N.J.S.A. 58:10B-1, *et seq.*
- The *Site Remediation Reform Act (SRRA)*, enacted in 2009, changed significantly how contaminated sites are investigated and remediated. In particular, the law established that Licensed Site Remediation Professionals – and not the state – will supervise and approve most site cleanups. N.J.S.A. 58:10C-1 *et seq.*

### ***Strategic Considerations for Working with State Agencies and Accessing Resources***

► **Reaching out to the Brownfields Redevelopment Interagency Team (BRIT).** State environmental and legal requirements are complex. The numerous state funding programs described throughout this handbook require an intimate familiarity in order to maneuver through and access key financing mechanisms. Because of the many state agencies and offices involved, the *Brownfields Redevelopment Interagency Team (BRIT)* was established to streamline and coordinate the brownfields redevelopment process. The BRIT, which is housed in the Department of Consumer Affairs and includes participation from over 20 member agencies, is intended to be the central resource for project developers, municipal officials, and others seeking information and assistance on brownfields projects. For those who are uncertain about how best to work with the state, the BRIT can be an initial point of contact at any stage of the process – from planning to remediation and financing. If a site seems to require the attention of just one or a few state agencies and their programs, the BRIT will connect you with the appropriate agencies. For complex brownfield sites that require the involvement of more than four or

five state agencies, the BRIT will visit the site for a preview and then convene BRIT members to identify and compile the resources needed to address legal issues, planning, environmental requirements, infrastructure development, and financing. (See <http://www.njsitemart.com/sitemart/cwp/view.asp?A=325&Q=208449>.)

Another interagency body housed at the DCA, the *New Jersey Brownfields Redevelopment Taskforce*, was established by state law to coordinate state policy on brownfields redevelopment. The Taskforce consists of representatives of seven state agencies and designated members of the public. (See <http://www.state.nj.us/dca/divisions/osg/commissions/brownfields/brtf.html>.)

► **Involving state officials early on in the local brownfields decision-making process.** Including state officials in a local brownfields task force is one mechanism for incorporating state expertise early in and throughout the planning process. State participation can bring high-level support to a project as well as help state officials learn about the local issues and the needs of the community.

► **Participating in state brownfields education and training programs.** State agencies provide a range of educational resources for municipalities, community groups, and the private sector. For example, the NJDEP hosts quarterly brownfield roundtables at its office in Trenton. The morning portion of the meeting is exclusively for municipal, county, state, federal, and nonprofits to discuss what is working and what is challenging in local brownfields redevelopment efforts. The afternoon sessions, open to all interested in New Jersey brownfields redevelopment, focus on various brownfields topics. (See <http://www.state.nj.us/dep//srp/brownfields/roundtables/>.)

► **Accessing federal brownfields resources.** At the federal level, the U.S. EPA (Office of Brownfields and Land Revitalization) is the central agency engaged in brownfields redevelopment. Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA provides financial assistance for brownfields cleanup and revitalization activities – from planning, assessment, and cleanup, to job-training grants that help place unemployed and under-employed residents from brownfields-impacted communities in brownfields-related jobs. (See <http://www.epa.gov/brownfields/>.) EPA holds quarterly meetings in New York and New Jersey and partners with the New Jersey Institute of Technology Hazardous Substance Research Center to host interactive forums to address stakeholder information needs.

The U.S. Department of Housing and Urban Development also has significant involvement in brownfields redevelopment through its Community Development Block Grant (CDBG) and Brownfields Economic Development Initiative (BEDI) programs. (See <http://www.hud.gov/offices/cpd/communitydevelopment/programs/> and <http://www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/index.cfm>.)

### ***Key Federal and State Resources for Brownfields Redevelopment***

Appendix B lists the principal state and federal resources available to assist in brownfield redevelopment, and the individual chapters of this handbook note which resources are applicable to the different activities discussed in the chapters.

In addition to reviewing the resources listed in Appendix B, municipal officials and community stakeholders can review the following comprehensive listings of federal and state brownfields assistance programs:

- *Brownfields Redevelopment Resource Kit* – a comprehensive guide compiled by the state of New Jersey about its varied financial and technical resources. (See <http://www.state.nj.us/dca/divisions/osg/docs/brownfieldsresourcekit.pdf>.)
- *Brownfields Federal Programs Guide* – a compendium of technical and financial assistance available from federal agencies for brownfields and land revitalization projects, published by U.S. EPA. (See [http://www.epa.gov/brownfields/partners/2009\\_fpg.pdf](http://www.epa.gov/brownfields/partners/2009_fpg.pdf)). EPA also maintains a web site on Brownfields Funding and Financing and in 2003 published a Directory of Technical Assistance for Land Revitalization. (See <http://www.epa.gov/brownfields/mmatters.htm> and [http://www.brownfieldstsc.org/pdfs/FINAL\\_DIRECTORY.pdf](http://www.brownfieldstsc.org/pdfs/FINAL_DIRECTORY.pdf).)



## CHAPTER FOUR

### IDENTIFYING POTENTIAL BROWNFIELD PROPERTIES

A brownfield can be anything from an abandoned industrial site to a former dry cleaner or gas station. Under federal law, a brownfield is “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.”<sup>13</sup> The New Jersey definition of a brownfield is similar: “Any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.”<sup>14</sup> Sites with Underground Storage Tanks are also treated as brownfields.<sup>15</sup> While the federal brownfields definition excludes Superfund sites, New Jersey state law does not explicitly exclude such sites.

Brownfields are common in New Jersey. The NJDEP has estimated that of the 23,000 contaminated sites it oversees at any given time, about 10,000 are potential brownfield sites.<sup>16</sup> Often, these sites are very close to where people live. A field study conducted in 2001 found that 80 percent of the state’s brownfields were within a quarter-mile of a home, including many located within residential neighborhoods. What sometimes makes them hard to spot is their size: many of the sites surveyed in 2001 were very small, and 28% were less than half an acre in size.<sup>17</sup>

An initial step in considering brownfields redevelopment opportunities is to *identify* potential brownfields in the community. For municipal officials and community members who are exploring redevelopment opportunities broadly, creating such a list can help focus the planning process. Even if there are already specific brownfield properties of interest to the community, the process of creating a more comprehensive list may reveal other brownfields in the immediate area and shed light on the potential for broader redevelopment opportunities.

#### *Strategic Considerations for Identifying Brownfields*

► **Consulting the New Jersey Brownfields “SiteMart” Database.** New Jersey is required under state law to create an inventory of brownfield sites and to actively market sites on the inventory to prospective developers.<sup>18</sup> The Site\Mart database is the state’s official brownfields inventory and also serves as a promotional tool to advance redevelopment efforts. The interactive SiteMart database currently includes over 7,000

---

<sup>13</sup> 42 U.S.Code 9601, CERCLA sec. 101.

<sup>14</sup> N.J.S.A. 58:10B-23.d

<sup>15</sup> N.J.S.A. 58:10B-1.3.

<sup>16</sup> See NJDEP, Brownfields FAQ, available at: <http://www.state.nj.us/dep/srp/brownfields/faq/#howmanysites>.

<sup>17</sup> Michael Greenberg, et al., “Brownfield Redevelopment and Affordable Housing: A Case Study of New Jersey,” *Housing Policy Debate*, Volume 12, Issue 3 (2001), 517. Additionally, according to this survey, 80% of the sites were within a quarter-mile of the nearest residence.

<sup>18</sup> N.J.S.A. 58:10B-23(b),(c).

sites that are accessible to the public, providing a brief description each site, as well as the address, size, value (as a range), and type of ownership. Anyone may register with and use the database for free. (See [www.njsitemart.com](http://www.njsitemart.com).)

► **Organizing the community to locate possible brownfields.** The state's inventory may not contain all of the brownfields properties in a particular neighborhood. Municipal officials and agencies may have records that will help the community learn which other properties could be considered brownfields. Another way to identify brownfields – and to confirm information found in state and local records – is to ask community members whether they own or know of any idle, vacant, or underproductive land. If municipal officials have established a brownfields taskforce, that group can help organize community input to identify potential brownfield sites. Municipal officials can partner with community leaders and local volunteer organizations to conduct a written survey of residents. They can also organize interested groups to do their own physical survey by driving through the community to identify potential brownfields, or organize a group tour of potential brownfield sites. Involving the community in this way can help identify brownfields and begin a process of involving the community in decisions about types of redevelopment or future uses for specific sites. It can also help secure community support and participation for the later stages of the redevelopment process. Information and observations contributed by the community can be entered into the municipal database of brownfield sites.<sup>19</sup>

► **Creating a map overlaying brownfields with other existing municipal land use information.** Mapping brownfield sites can provide a helpful visual aid for future redevelopment planning. Such a map can be enhanced by overlaying a variety of data that are relevant to the redevelopment process – *e.g.*, zoning areas, designated redevelopment or open space areas, etc. If the local government maintains a GIS system or other interactive computer database, it can incorporate brownfield sites into those tools.

► **Prioritizing sites for further investigation.** A comprehensive list of potential brownfield sites is a starting point for determining how and where redevelopment efforts can best serve the community. A variety of factors will influence the decision about which brownfield sites have the greatest potential for redevelopment and merit further consideration by the municipality and community stakeholders. Which sites can best advance existing municipal planning priorities, including open space and natural resource protection? Which sites are posing the greatest obstacles to neighborhood improvement? What is the ownership status of the sites, and is there already interest on the part of private developers in certain sites?

---

<sup>19</sup> See generally, Nat'l Center for Neighborhoods and Brownfields Redevelopment, *Building Capacity: Brownfields Redevelopment for Community-Based Organizations* (2008), available at: [http://policy.rutgers.edu/brownfields/events/Manual\\_Building\\_Capacity.pdf](http://policy.rutgers.edu/brownfields/events/Manual_Building_Capacity.pdf).

### **Creating an Inventory and Prioritizing Brownfield Sites for Further Investigation in Passaic County, New Jersey**

In order to assist its municipalities in advancing and prioritizing brownfield redevelopment, Passaic County, New Jersey is developing an inventory of and assessing brownfield sites. Two EPA brownfields grants totaling \$400,000 are being used directly for inventory and assessment, while the county is providing in-kind contributions through staffing and grant administration. The Passaic County Brownfields Assessment Program is developing a database of brownfield sites that will be placed on the County's GIS system, real estate database, and website. As of late 2009, information on nearly 300 sites had been entered into the database. Following the identification of sites, the county will consider strategies for redevelopment and will utilize specific criteria to select sites for further investigation. The selection criteria will include:

- ownership status (municipal, county, tax lien, tax foreclosure, private ownership, etc.);
- location within a designated Redevelopment Area;
- priority for redevelopment by a municipality or the county;
- designated for inclusion in the county's Open Space list of properties to be acquired;
- properties located in urban areas; and
- properties of interest to the development community.

According to the county, high priority will be given to the recommendations of local residents and sites near sensitive areas such as schools and community facilities.

**Source:** Passaic County, Brownfields Assessment Program Overview, available at: <http://www.passaiccountynj.org/Departments/window-economicdevbrownfieldinfo.htm>.

### ***Resources for Identifying Brownfields***

Appendix B contains a listing of the principal state and federal financial assistance programs that are available to fund the various stages of a brownfields redevelopment initiative.

One program included in the appendix that provides funding specifically for site inventory activities is the U.S. EPA *Brownfields Assessment Grants program*. Grants awarded under this program may be used for inventory, characterization, assessment, planning, and community involvement activities related to brownfield sites. Municipalities may apply for a site-specific grant or a community-wide assessment grant. The total request is limited to \$400,000, unless a waiver is requested due to the extent of contamination at a specific site.

Other financial assistance programs that fund brownfields assessments (see Chapter Five) may support related inventory activities.

## CHAPTER FIVE

### EVALUATING ENVIRONMENTAL CONDITIONS AT BROWNFIELDS

Once individual brownfield properties have been identified as sites of interest for redevelopment, information about the nature and extent of contamination at those sites is needed in order to better understand the actual cleanup and redevelopment potential. Even in cases where the municipality will not be the party carrying out the site cleanup, municipal agencies often play a crucial role by facilitating or conducting the site assessment for eventual private cleanup and development. Information about site contamination is important in considering different reuse options for the property. The information will also help gauge potential cleanup liability under federal and state law, as well as the costs of cleanup, demolition, and site preparation. In some cases, an assessment will reveal that no cleanup is required. EPA has reported that about one third of the sites receiving federal funding for assessment have not required any cleanup.<sup>20</sup>

#### *Strategic Considerations for Evaluating Environmental Conditions*

► **Reviewing public records from municipal, state, or federal agencies.** Formal evaluation of a site can require considerable time and resources. An initial review of government records to find out what is already known about brownfield sites can help prioritize certain sites for potential redevelopment and eliminate other sites from consideration. The information obtained from agencies can also help focus more detailed evaluations conducted for those sites. Government records can shed light on the types of businesses that have operated at the site, as well as the kinds of chemicals used or wastes created at those businesses. Government records can also provide specific information about current site conditions.

Local agencies can provide a variety of relevant information, such as ownership and tax status, current and past zoning, and public utility service. In addition, there are several state and federal public databases that provide land use, contaminated site, demographic, wetland and other site-specific information. Members of the public can also request regulatory information about specific sites by submitting a written request at the state or federal levels. For more information on submitting a request under New Jersey's Open Public Records Act, see <http://www.nj.gov/dep/opra/>. For information about requests under the federal Freedom of Information Act, see [http://www.justice.gov/oip/04\\_3.html](http://www.justice.gov/oip/04_3.html).

---

<sup>20</sup> Natl. Assn. of Local Government Environmental Professionals and Northeast-Midwest Institute, *Unlocking Brownfields: Keys to Community Revitalization*, available at: <http://www.resourcesaver.com/file/toolmanager/CustomO93C337F65023.pdf>

### State and Federal Databases with Site-Specific Information

***I-MapNJ*** is an interactive GIS mapping tool that allows anyone to view GIS maps showing environmental, land use, and other information about specific properties or areas in New Jersey. Each property listed on the New Jersey SiteMart database includes a link to the location of property via I-MapNJ. (See <http://www.nj.gov/dep/gis/depsplash.htm>.) Another similar website, ***NJ-Geo Web***, allows users to view various mapped environmental layers for a specific location, including key items found in the I-MapNJ. (See <http://www.nj.gov/dep/gis/geoweb splash.htm>.)

***Known Contaminated Sites in New Jersey (KCS-NJ)***. Because the state's definition of a brownfield includes sites where there is only *suspected* contamination, a site listed on the SiteMart may or may not have actual contamination. In contrast, the KCS-NJ report is a listing of sites, by county and city, where contamination of soil and/or ground water has been detected at levels greater than the applicable cleanup criteria or standards. The list is organized into active, pending, and closed sites. (See <http://www.nj.gov/dep/srp/kcsnj/>.)

***Data Miner***. The NJDEP maintains a database that allows users to search for one or more sites that are currently regulated by NJDEP, and then to retrieve additional environmental information about regulatory activities connected with that site. (See [http://datamine2.state.nj.us/dep/DEP\\_OPRA/](http://datamine2.state.nj.us/dep/DEP_OPRA/).)

***Envirofacts***: The US EPA manages the Envirofacts website, which provides access to several EPA databases containing information submitted or compiled pursuant to federal air, water, and waste laws. Users can retrieve information by zip code or facility name. (See <http://www.epa.gov/enviro/>.)

***ATSDR Brownfield/Land Reuse Site Tool***: The federal Agency for Toxic Substances and Disease Registry (ATSDR, within the Centers for Disease Control and Prevention) has created this searchable database of brownfield properties, which provides information on former uses, institutional controls, and other site characteristics. See <http://www.epa.gov/r5brownfields/pdf/bf-sitetool-flyer-072109.pdf>. The tool is available as a CD packet that can be obtained from ATSDR by contacting the agency via email at [atsdr.landreuse@cdc.gov](mailto:atsdr.landreuse@cdc.gov).

► **Conducting an Environmental Assessment.** An environmental site assessment (ESA) is the formal tool used to determine the presence, type, and extent of contamination. These assessments are routinely conducted as part of due diligence prior to the sale of commercial properties and are often required by lenders. They vary in scope and cost, depending on the site conditions. The Association for Standards, Testing and Materials (ASTM) has developed a standard industry practice for conducting an ESA on commercial real estate. The standard practice is divided into phases. A *Phase I* ESA is the first step in identifying the presence or likely presence of contaminants, and generally involves a review of readily available information. A *Phase II* ESA, which involves sampling and testing, evaluates the recognized environmental conditions identified in the

Phase I ESA in order to provide sufficient information about the nature and extent of contamination to assist in making an informed business decision.<sup>21</sup>

New Jersey law establishes independent requirements for conducting an environmental site assessment. Sites falling under the jurisdiction of state cleanup laws must conduct a *preliminary assessment* (PA) and, if necessary, a *site investigation* (SI). A Preliminary Assessment is defined as “the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site. . . .”<sup>22</sup> A site investigation is “the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or have migrated or are migrating from the site at levels in excess of the applicable remediation standards. . . . developed based upon the information collected pursuant to the preliminary assessment.”<sup>23</sup> The PA/SI are similar to the ASTM Phase I and II, but require information and reporting formats as set out in state law and regulations.<sup>24</sup> Specifically, the NJDEP’s Technical Regulations stipulate that the PA must examine past operations at the site to determine the likelihood of environmental contamination.<sup>25</sup> Historical data must be reviewed, including aerial photographs, title documents, and fire insurance maps among others.<sup>26</sup> Based on this information, the PA report must present an opinion as to whether additional investigation or remediation is warranted. If an SI is required, the owner must determine through a rigorous sampling and analysis process if any contaminants are present at the site and remediate as required.<sup>27</sup>

New Jersey law requires due diligence in the form of a PA (and if necessary, an SI) in order to qualify for certain defenses to liability for those who purchase brownfields (see Chapter Eight). Additionally, New Jersey brownfields programs provide funding specifically for conducting PA and SI activities.

At the federal level, EPA brownfields grantees must meet the “All Appropriate Inquiries” (AAI) standard for conducting due diligence or a Phase I ESA of a property. EPA has adopted a regulation setting forth standards and practices for AAI and recognizes the ASTM Phase I standard as meeting the federal requirements.<sup>28</sup> Following accepted standards for conducting assessments can also help protect municipalities and other parties from potential liability under federal cleanup laws. At the federal level, the AAI requirements are applicable to any party who may potentially claim protection from CERCLA liability. In practice, the most important aspect of ASTM is the fact that it addresses CERCLA liability under AAI requirements.

---

<sup>21</sup> See ASTM E1527-05 and ASTM E1903-97, summaries available at: <http://www.astm.org/Standard/index.shtml>; see generally N.J. Institute of Technology, Brownfield Contaminated Site Investigation, at: <http://www.njit.edu/tab/managing/pre-development/contamination-investigation.php>.

<sup>22</sup> N.J.S.A. 58:10B-1; 13:1K-8.

<sup>23</sup> N.J.S.A. 58:10B-1; 13:1K-8.

<sup>24</sup> See N.J.A.C. 7:26E-3.1, 3.3.

<sup>25</sup> N.J.A.C. 7:26E-3.1.

<sup>26</sup> N.J.A.C. 7:26E-3.1(b).

<sup>27</sup> N.J.S.A. 58:10B-1; N.J.S.A. 58:10-23.11g (d), (e).

<sup>28</sup> See 40 Code Fed. Regs. Part 312. See also <http://www.epa.gov/swerosps/bf/regneg.htm>.

► **Hiring a Consultant.** A qualified consultant can assist in pursuing an environmental site assessment to identify the nature and extent of contamination, liability issues, and potential cleanup costs. As noted above, recipients of federal brownfields grants and those seeking federal liability protections must comply with the federal AAI procedures, which include using a qualified consultant. The EPA AAI rule requires that the person who oversees the AAI and who signs the written report must meet the definition of an environmental professional provided in the rule.<sup>29</sup>

In New Jersey, state law requires that Licensed Site Remediation Professionals (LSRPs) oversee site cleanup, but the state does not require use of an LSRP for carrying out “due diligence” (environmental site assessments) required to obtain liability protection as set out in the law.<sup>30</sup> While some firms specialize in site assessments, many now are full-service firms that are capable of conducting remediation activities as well.<sup>31</sup> Because LSRPs must report all discharges of hazardous substances, many developers do not elect to use an LSRP for initial environmental assessments.

### Sample RFPs for Selecting an Environmental Consultant

The following websites contain examples of Requests for Proposals and/or provide detailed guidance for developing an RFP for an environmental consultant on a brownfields redevelopment project.

- *New Jersey Institute of Technology*  
Sample Request for Proposals: Environmental Engineering Services to Perform Brownfield Assessments  
[http://www.njit.edu/tab/docs/sample\\_request\\_for\\_proposal.pdf](http://www.njit.edu/tab/docs/sample_request_for_proposal.pdf)
- *Smarte.Org*  
Writing a Request for Proposals for Environmental Site Assessment or Cleanup  
<http://www.smarte.org/smarte/resource/sn-rfp.xml;jsessionid=ekem6aolfr6a4>
- *U.S. EPA Region 10*  
Grantee Toolbox (“Procurement”)  
<http://yosemite.epa.gov/R10/CLEANUP.NSF/4c5259381f6b967d88256b5800611592/d94a4bcba5919e2088256f3400826e3b!OpenDocument>

<sup>29</sup> For more information on the required qualifications for an environmental professional under the EPA rule, see [http://www.epa.gov/brownfields/aai/HiringEP\\_Addendum\\_factsheet.pdf](http://www.epa.gov/brownfields/aai/HiringEP_Addendum_factsheet.pdf).

<sup>30</sup> N.J.A.C. 7:26C-1.4. The experience and other requirements for licensing under New Jersey law would qualify an LSRP as an “environmental professional” under the federal AAI rule. See N.J.S.A.58:10C-7; 40 C.F.R. 312.10.

<sup>31</sup> For practical tips on selecting an environmental consultant for a brownfields project, see Env. Law Inst., *A Guidebook for Brownfield Property Owners* 20, available at: [http://www.elistore.org/reports\\_detail.asp?ID=459](http://www.elistore.org/reports_detail.asp?ID=459).

► **Gaining Access to Privately-Owned Sites.** For properties that are privately owned, a municipality would need permission from the owner in order to investigate the site. This typically involves obtaining an access agreement from the owner.

There are also circumstances in which a municipality may wish to acquire title to brownfield properties that are privately owned, in order to advance cleanup and redevelopment efforts. In addition to negotiating purchase of a property, a city might have other options for properties that:

- Are vacant or underutilized and contributing to blight conditions. In this type of situation, a municipality may consider exercising eminent domain over brownfield properties in order to facilitate redevelopment. New Jersey law sets out the requirements for exercising eminent domain within designated redevelopment areas (see Text Box below).
- Present an imminent threat to public health or the environment. In situations where a property is posing an imminent threat to the public, municipalities may seek to exercise eminent domain under the state’s Eminent Domain Act.<sup>32</sup>
- Are delinquent in taxes. Such sites may be subject to foreclosure by the municipality, which could retain the property or assign it to an interested developer. New Jersey law governs the tax foreclosure process.<sup>33</sup>

In the 1990s, the city of Trenton began a major redevelopment effort in the distressed neighborhood surrounding the city’s Battle Monument site. At the outset, the city acquired all 120 properties that comprised the 11-acre site. The city purchased some of the sites, but most were acquired through tax foreclosure, while a few were condemned. The city assembled the properties into six sites that corresponded to the different phases of the redevelopment initiative – in addition to three housing developments, the initiative included a head start program, a health center, and a small park.<sup>34</sup>

Certain state financing programs can facilitate acquisition of brownfield sites. These include New Jersey Redevelopment Authority programs that are available to projects in NJRA eligible urban communities, such as the *Urban Site Acquisition Program* and the *Environmental Equity Program (E<sup>2</sup>P)* program. (See Appendix B.)

Under New Jersey law, there are certain liability protections for municipalities involved in brownfields redevelopment. A local government entity can qualify for a defense against liability to the State or another person when the local government “involuntarily” acquires contaminated land (*e.g.* via tax bankruptcy, tax delinquency, abandonment, condemnation or eminent domain) and also when it voluntarily acquires a site “for

---

<sup>32</sup> N.J.A.C. 20:3-1, *et seq.*

<sup>33</sup> N.J.S.A. 2A:50-1, *et. seq.*; N.J.S.A. 54:5-1--137.

<sup>34</sup> U.S. Conference of Mayors, *Reclaiming the Land, Revitalizing Communities: Brownfields Redevelopment Best Practices*, Vol. 2 (2007), available at: [usmayors.org/brownfields/library/brownfieldsbestpracticesvol207.pdf](http://usmayors.org/brownfields/library/brownfieldsbestpracticesvol207.pdf).



redevelopment purposes.” The liability protection does not apply if the local government caused or contributed to the discharge of the hazardous substance.<sup>35</sup>

### **Eminent Domain and Redevelopment Areas: Evolving New Jersey Law**

The 1947 New Jersey Constitution included a clause declaring that: “The clearance, replanning, development or redevelopment of *blighted areas* shall be a public purpose and public use, for which private property may be taken or acquired.” Article VIII, Section 3 (emphasis added). The 1992 Local Redevelopment and Housing Law is the most recent in a series of statutes that implements this constitutional provision authorizing municipal redevelopment of blighted areas. N.J.S.A. 40A:12A-5. The Redevelopment Law sets forth the requirements for municipalities to designate a “redevelopment area,” within which municipalities are authorized to take a number of actions to advance redevelopment, including the exercise of *eminent domain* over properties in certain circumstances. N.J.S.A. 40A:12A-8. In order to designate a redevelopment area, the municipality must demonstrate (and establish by formal resolution) that the property satisfies one of several criteria listed in the law. The criteria incorporate conditions such as substandard, unsanitary and dilapidated buildings; abandonment of buildings; and lack of proper utilization of the area due to condition of the title or diverse ownership of real property. N.J.S.A. 40A:12A-5. A number of recent court cases, beginning with *Gallenthin Realty Development Inc. v. Borough of Paulsboro*, have analyzed how these Redevelopment Law criteria are to be applied. See 191 N.J. 344 (2007). In the wake of the *Gallenthin* and other decisions, commentators have underscored the importance for municipalities of documenting carefully the bases for their decisions to designate a Redevelopment Area. See, e.g., Goldsmith & Beckelman, “What will Happen to Redevelopment in New Jersey when the Economy Recovers?” 36 RUTGERS LAW RECORD 314 (2009). Attorneys specializing in redevelopment law can assist municipalities in ensuring that Redevelopment Area designations meet the statutory criteria, consistent with recent state court decisions.

The decision whether to acquire an abandoned or inactive site raises a host of legal and financial issues for municipalities to consider and requires careful consideration of the risks and advantages to the municipality. New Jersey law in the areas of environment, redevelopment, and housing provides the context for making these decisions and is a complex and evolving arena. Thus redevelopment projects usually require the services of a lawyer who specializes in these fields.

### ***Resources for Evaluating Environmental Conditions***

Appendix B contains a listing of the key state and federal financial assistance programs that are available to fund various stages of brownfields redevelopment initiatives. These include the following resources that are available for assessing environmental conditions at brownfield sites:

---

<sup>35</sup> N.J.S.A. 58:10-23.11g(d)(4). If there is a “timely cleanup” taking place at the time that an eminent domain action is instituted, the municipal innocent owner defense is lost.

- *Hazardous Discharge Site Remediation Fund (HDSRF)*. This NJDEP and NJEDA program provides grants to public entities (municipalities, counties, redevelopment agencies) for PA, SI, and RI activities. The public entity must hold the tax sale certificate, have acquired the property through foreclosure or other similar means, or have acquired the property by voluntary conveyance for the purposes of redevelopment. These grants provide for 100% of the eligible costs and are capped at \$3 million per municipality per calendar year.
- *New Jersey Pre-Development Fund*. This fund supports pre-development activities in NJRA-eligible urban communities. The fund covers feasibility studies, architectural costs, environmental and engineering studies, legal and other related soft costs needed for development to proceed.
- *Brownfields Assessment Grants*. Through this program, the U.S. EPA awards grants to governmental entities for inventory, characterization, assessment, planning, and community involvement activities related to brownfield sites. Municipalities may apply for a site-specific grant or a community-wide assessment grant. The total request is limited to \$400,000, unless a waiver is requested due to the extent of contamination at a specific site.
- *Targeted Brownfields Assessments*. Under this direct assistance program, EPA (through its regional offices) directs a contractor to conduct environmental assessment activities that can include Phase I and Phase II assessments, and evaluation of cleanup options and/or cost estimates based on future uses and redevelopment plans.
- *Community Development Block Grant (CDBG) Program*. This U.S. HUD program provides an annual grant to municipalities on a formula basis and may be used for brownfields-related activities such as site assessment, cleanup, demolition, rehabilitation, and construction. Related programs, the *Section 108 Loan Guarantee Program* and the *Brownfields Economic Development Initiative (BEDI)* are available to finance redevelopment projects that increase economic opportunity for persons of low-and moderate-income or stimulate and retain businesses and jobs that lead to economic revitalization. Funds may be used for a range of activities, but applications are discouraged whose scope is limited only to site acquisition, assessment and/or remediation, where there is no immediately planned redevelopment.

### **State Technical Assistance Grants - A New Resource for Communities**

Under New Jersey's Site Remediation Reform Act, the NJDEP is directed to use funds from the Remediation Guarantee Fund to provide Technical Assistance Grants (TAGs) to nonprofit community groups. TAGs are provided for the purpose of hiring independent Licensed Site Remediation Professionals to assist the group in understanding environmental conditions at, and the remediation of, a contaminated site. The NJDEP has issued a guidance document to assist community groups and LSRPs in determining who is eligible for a TAG and how to apply, as well as understanding the eligible TAG activities and reporting requirements associated with a TAG. (See <http://www.state.nj.us/dep/srp/guidance/srra/>.) At the federal level, EPA manages a TAG program that provides similar assistance to communities living near Superfund sites. (See <http://www.epa.gov/superfund/community/tag/>.)

## CHAPTER SIX

### IDENTIFYING FUTURE USES FOR BROWNFIELDS

As information is gathered and sites prioritized, municipal agencies and community partners will be in a position to identify appropriate and best uses for redevelopment. Whether a site will be redeveloped by the municipality or by the private sector, it is important to work toward a known use from an early stage. In particular, establishing a specific reuse or a general category of uses will help focus remediation activities. Projects that pursue cleanup before considering carefully the future use for the property may incur delays and unnecessary expenses, or may conduct remedial actions that run counter to the ultimately agreed upon use for the site.<sup>36</sup> Projects with an identified reuse plan and thus a clearer understanding of cleanup costs will be more attractive to private investors and to federal and state financial assistance programs. In addition, creating a vision for reuse can help to sustain community support and engagement through to the project's completion.

Against the backdrop of local real estate market conditions, reuse decisions will be influenced by environmental conditions, access to transportation/infrastructure, the need for community services, natural resource preservation, and a variety of other factors. While the evaluation of reuse options inevitably involves trade-offs between community goals, a vision for reuse that ties into established priorities can help can strengthen public and private support for brownfields projects. The New Jersey State Plan calls on communities to: "Identify sites and areas for redevelopment consistent with a community-based vision and consensus and prepare brownfields redevelopment strategies that coordinate community planning efforts with all levels of government."<sup>37</sup> A central consideration for local communities is thus the extent to which reuse options will serve the larger goals established in existing municipal and neighborhood plans that promote economic development and revitalization, expansion of green space, creation of affordable housing, etc.

*Redevelopment to Promote Public Health.* Whether a municipality plans to redevelop its own property or facilitate private redevelopment, there are good reasons to consider early on how redevelopment can improve community health. Municipal brownfields redevelopment initiatives typically focus on properties in communities that have suffered from the significant social and economic impacts of disinvestment and blight. These communities also often suffer from a lack of community and public health services. On one level, any redevelopment plans for such properties will improve public health by removing unsafe and dangerous buildings, reducing exposure to contaminants, and addressing conditions that foster crime.

---

<sup>36</sup> U.S. EPA Region 4, *Revitalizing Southeastern Communities: A Brownfields Toolkit* ("Keys to Success"), available at: <http://www.epa.gov/region4/brownfieldstoolkit/index.html>.

<sup>37</sup> New Jersey State Plan (Statewide Policies) at 159, available at: <http://www.state.nj.us/dca/divisions/osg/plan/>.

Beyond demolition and cleanup, however, there are many ways to advance public health when considering reuse options for specific brownfield properties. Establishing *walkable* and *transit-friendly* neighborhoods promotes physical activity and reduces air pollution from vehicles. *Parks, community gardens, and other outdoor spaces* – often lacking in distressed communities – can provide opportunities for walking, biking, and other physical activity, and can enhance civic pride and wellbeing. Moreover, green spaces can increase local property values and attract additional residents and businesses to the neighborhood. Incorporating *green building* principles for commercial and residential buildings advances public health by integrating indoor environmental and other sustainable design features. Redevelopment can also promote community health directly by providing *health-related services*, such as medical, dental, and pharmacy services, recreational facilities, and accessible grocery stores and farmers markets. Numerous brownfields projects throughout New Jersey have used these strategies to advance broad public health objectives.<sup>38</sup>

### ***Practical Considerations for Identifying Reuse Options***

► **Convening community residents and stakeholders to develop a vision for reuse.** Municipal officials should establish a process through which officials and key community stakeholders can fully and openly assess local needs, review the parameters of targeted brownfields properties, and consider the ultimate reuse goal. If the municipality has already created a brownfields working group or task force, this body can help facilitate public input and ensure ongoing outreach to residents. Including developers and business leaders in these discussions can add important insight into the constraints and opportunities for various approaches to redevelopment. A workshop or charrette can be an effective way to present information collected by the municipality and obtain community input on redevelopment options. In New Bedford, Massachusetts, for example, the city held a public charrette to enable community-wide participation in creating a vision for the redevelopment of a priority brownfield site. Over 60 people attended, including business and economic development leaders, planners, developers, nonprofit directors, neighborhood community groups, municipal agencies and other interested citizens.<sup>39</sup> Such a workshop can also lay the foundation for continued discussion about redevelopment strategies as the municipality obtains new information about site conditions and other factors.

---

<sup>38</sup> For example, the cities of Trenton, Camden and Jersey City are using EPA brownfields grants for redevelopment projects that incorporate farmers markets, parks, and other community amenities to advance public health. For more information on these initiatives, see [http://cfpub.epa.gov/bf\\_factsheets/](http://cfpub.epa.gov/bf_factsheets/) (search by city name).

<sup>39</sup> See City of New Bedford, MA, *Fairhaven Mills Site Public Charrette Final Report* (2006), available at <http://www.newbedford-ma.gov/Planning/Fairhaven%20Mills%20Charette%20Report.pdf>.

## Brownfields Redevelopment and Community Health Services

Brownfields are often located in areas where poverty rates are high, the population suffers from disease disparities, and the residents lack access to health care. Communities around the U.S. have succeeded in addressing public health as part of their revitalization initiatives, by establishing health clinics, community centers, specialty care clinics, and hospitals.

■ The ***Johnnie Ruth-Clarke Health Center Brownfields Redevelopment Project***, in St. Petersburg, Florida, received an award from EPA in 2005 in recognition for Excellence in Brownfields Redevelopment. The city Mercy Hospital, an historic African-American hospital that had become a deteriorated blight within its immediate four neighborhoods. An extensive planning process established the need for health services at the site and selected the Johnnie Ruth-Clarke Health Center to occupy the site. The project obtained funds from various sources, including the EPA Brownfields Assessment Grant Program, the Allegany Franciscan Foundation, the Community Development Block Grant program, and the U.S. Department of Health and Human Services (for facility construction). The new hospital now employs over 100 people, serves several hundred patients a day, and is catalyzing other private investments. **Source:** *Revitalization through Brownfield Redevelopment: How Paterson is Succeeding and You Can Too!* 83 (Env. Law Inst., 2007), available at: [http://www.eli.org/program\\_areas/innovation\\_governance\\_pubs.cfm](http://www.eli.org/program_areas/innovation_governance_pubs.cfm).

■ In Clearwater, Florida, an abandoned gas station became the ***Willa Carson Health Resource Center*** – a free clinic for residents of the African-American community of North Greenwood. The city had purchased the property with state brownfields funds and worked with the state environmental agency to complete assessment and remediation. Representatives of North Greenwood participated in redevelopment planning and recommended that the city relocate an existing non-profit clinic to this new site. The existing clinic, founded by community resident and nurse, Willa Carson, had been serving residents from a neighborhood building. Because the project addressed public health issues, Florida State Tobacco Settlement funds were appropriated for the construction of the new health care facility. The city entered into a 30-year, \$1/year lease with the new clinic, whose largely volunteer medical staff provides immunizations, physicals, tests and screenings, flu shots, and counseling. **Sources:** Willa Carson Health Resource Center, <http://www.carsonhrc.org/index.html>; Florida Brownfields Assoc., <http://www.floridabrownfields.org/SuccessStories/SS-WillaCarson.htm>.

■ The Gila River Indian Community (GRIC), an EPA Brownfields Showcase Community, facilitated the cleanup and redevelopment of a historic mission south of Phoenix into a ***Diabetes Education and Research Center***. The GRIC, a federally recognized tribe, has a high poverty rate and the highest adult diabetes rate (over 50%) in the U.S. Using federal brownfields and other funds, the GRIC developed a comprehensive inventory of approximately 60 to 70 brownfield properties and assessed approximately 20 properties. The GRIC cleaned up several priority sites, including leaking underground storage tanks on the St. John Mission property. The property was then redeveloped into a Diabetes Education and Resource Center, which is widely used by GRIC community members. **Sources:** EPA, *Tribal Brownfields and Response Programs*, available at: <http://www.epa.gov/brownfields/tribalreport08.pdf>; *Underground Storage Tanks And Brownfields Site: Gila River Indian Community/St. John Mission*, [http://www.epa.gov/oust/rags/az\\_gilariver.pdf](http://www.epa.gov/oust/rags/az_gilariver.pdf).

► **Involving the local health department early on.** Municipal health officials can be important partners for identifying public health issues and bringing expertise to addressing those issues in the redevelopment process. Local health departments may be able to provide human health and environmental data about specific sites and communities and offer technical assistance in the decision making process. They may be in a good position to gauge the gaps in public health services faced by different neighborhoods. Local health departments can also assist in coordinating and communicating with state and federal health agencies, such as the Agency for Toxic Substances and Disease Registry (ATSDR), which may be able to provide technical or financial resources for addressing public health in the brownfields redevelopment process.

#### **Tools for Identifying Community Health Care Needs**

The U.S. Department of Health and Human Services has created mapping tools for identifying geographic areas and communities that lack certain medical services. *Medically Underserved Areas/Populations* (MUA/Ps) are those designated by the agency as having too few primary care providers, high infant mortality, high poverty, and/or a high elderly population. *Health Professional Shortage Areas* (HPSAs) are designated by HRSA as having shortages of primary care, dental care, or mental health professionals and may be geographic (a county or service area), demographic (low income population), or institutional (comprehensive health center, federally qualified health center, or other public facility). (See <http://bhpr.hrsa.gov/shortage/>.) Users can either search the database by specific address or search for designated areas within a specific county or state. The database can thus be used to inform decisionmaking about reuse options and also to support project proposals for including community health services in brownfields redevelopment planning.

► **Researching similar remediation projects.** Federal, state, and local agencies, as well as nonprofit organizations, have developed numerous publications highlighting the many successful brownfields projects that have been carried out across the county. It is likely that there have been multiple brownfield projects with the same intended *uses* as those being considered, and that those projects have been described in publications that are easily available. Alternatively, brownfields initiatives can research successful redevelopment projects that began with the same initial *property type*. Appendix C contains a list of publications that describe successful brownfields projects by reuse option or type of property. EPA and New Jersey brownfields program officials also can help identify other communities that are willing to share their individual experiences directly.

► **Broadening the Scope of Redevelopment to Access Greater Resources: Brownfields Development Areas.** It may be possible to leverage greater state funding and technical assistance by scaling up a brownfields project. New Jersey's Brownfields Development Areas (BDA) program allows communities located within Planning Areas 1 and 2 to designate clusters of brownfield sites (a minimum of at least two sites, preferably within a contiguous area, however, depending upon the sites, they do not necessarily have to be adjacent to each other) for remediation and redevelopment. In order to receive

BDA designation, the boundaries of the area must be consistent with the boundaries of a designated Redevelopment Area; there must be broad community support for the BDA; and the establishment of the BDA must result in a benefit to public health, public safety, and the environment.<sup>40</sup>

A chief benefit of the BDA designation is coordinated oversight and assistance from the state for all brownfields within the BDA, which is managed by a single Case Manager from the NJDEP Office of Brownfields Reuse. This coordination helps to streamline the environmental investigation, cleanup, and compliance process. In addition, BDAs are eligible for increased funding under the state's Hazardous Discharge Site Remediation Fund. An additional \$2 million in grants per municipality per calendar year is available to perform assessment and remediation activities on contaminated property located within a designated BDA thus increasing the annual funding limit for that municipality to up to \$5,000,000.<sup>41</sup> Interested communities must form a steering committee of local stakeholders and submit an application including the proposed BDA boundaries, sites to be addressed, a description of current activities within the area, detailed information on the demographics and economic conditions within the municipality, and a discussion regarding the planning vision of the municipality. According to the agency, it is important for applicants to have a strong and diverse steering committee for the proposed BDA and to demonstrate that their redevelopment plans are achievable.<sup>42</sup>

### ***Key Resources for Redevelopment to Promote Public Health***

Appendix B lists numerous federal and state resources supporting brownfields redevelopment generally. Many of these programs – from EPA Brownfields Cleanup grants and HUD's CDBG funding, to New Jersey's Hazardous Discharge Site Remediation Fund (HDSRF) – can be used to advance brownfields projects focused on public health. Indeed, brownfields projects can strengthen their applications for competitive grant and financing programs by addressing identified public health needs.

There are also some federal and state brownfields resources that provide specifically for (or give priority to) projects with a public health focus. For example, up to 10% of a federal brownfields grant can be spent for *health monitoring*. This includes “collecting or linking baseline health and environmental measures to inform redevelopment planning options.”<sup>43</sup> These monitoring activities may reveal a lack of health care services, open space, or recreational facilities that can be addressed through the brownfields redevelopment process.

---

<sup>40</sup> N.J.S.A. 58:10B-25.1.

<sup>41</sup> See <http://www.state.nj.us/dep/srp/finance/hdsrf/factsheet.htm>.

<sup>42</sup> The program began in 2002, and as of 2009 there were 31 active BDAs statewide. For a list of BDAs, as well as more information on the BDA program and application process, see <http://www.nj.gov/dep/srp/brownfields/bda>.

<sup>43</sup> US EPA, *Brownfields Public Health and Health Monitoring* (EPA #560-F-06-210) (2006), available at: [www.epa.gov/brownfields/tools/finalphandbffact.pdf](http://www.epa.gov/brownfields/tools/finalphandbffact.pdf).



The public health-related issue addressed most frequently by federal and state brownfields and redevelopment funding programs is *open space* – a reuse option that not only protects the environmental and natural resources, but also advances public health by providing communities with parks, recreation, and green space. In 2005, New Jersey’s brownfields law was amended to specifically authorize use of the state Hazardous Discharge Site Remediation fund for recreation and conservation purposes. New Jersey’s Brownfields Redevelopment Resource Kit provides a listing of state resources available by Land Use Option, including “culture/open space/recreation.” Two notable state funding resources emphasizing open space are:

- *Green Acres Program.* This program, administered by NJDEP, provides low interest loans and grants to municipalities to facilitate acquisition of open space and development of outdoor recreational facilities. Green Acres encourages reclamation and restoration of former brownfields for use as public spaces, awarding one point in its scoring formula for awarding funds.
- *Environmental Infrastructure Financing Program.* New Jersey Environmental Infrastructure Trust manages this program in partnership with NJDEP, providing loans for brownfield remediation activities that improve water quality, including the acquisition of open space. Projects are eligible for loans at one-quarter or one-half of the market rate and for reduced financing costs.

In addition, the Association of New Jersey Environmental Commissions offers *Smart Growth Planning Grants* for municipalities to help develop local or regional plans, ordinances, studies or document reviews that protect natural resources and establish the land use patterns envisioned in the State Plan. Funds are awarded as one-to-one matching reimbursement grants of up to \$20,000. Among the projects eligible for funding according to the 2010 program guidelines are brownfields or revitalization plans that include new open space.

Green, healthy building design and construction is another brownfields redevelopment strategy that can promote public health and is the subject of a number of federal, state, and non-governmental programs. The New Jersey Green Homes Office, within the Department of Community Affairs, provides a listing of financial incentives for developers of green housing. Municipal officials help connect local brownfields developers to these resources. (See <http://www.state.nj.us/dca/hmfa/gho/dprograms/>.) Federal incentives for green building, which emphasize energy conservation, can be used to support an integrated approach to creating healthy and green buildings as part of brownfields redevelopment projects. (See <http://www.dsireusa.org/incentives/index.cfm?state=us>.)

**Florida's Innovative Brownfields and Public Health Tax Incentive**

In 2008, Florida enacted a state tax credit to encourage the construction and operation of new health care facilities on brownfield sites. Applicants for a state brownfields tax credit may claim an additional 25 percent of the total site rehabilitation costs, not to exceed \$500,000, if they provide documentation indicating that the construction of the health care facility on the brownfield site has received a certificate of occupancy or a license or certificate has been issued for the operation of the facility. Florida Statutes 220.1845(1)(k).

## CHAPTER SEVEN

### FACILITATING BROWNFIELDS CLEAN-UP

Municipal governments play a role in brownfields redevelopment by cleaning up properties that they own or by cleaning up privately-owned sites. New Jersey law governs the cleanup of contaminated sites that fall under state jurisdiction. As noted earlier, the law has undergone considerable change.

*The Clean-up Process in New Jersey.* As discussed in Chapter Five, brownfield sites in New Jersey will typically undergo a preliminary assessment (Phase I), followed by a site investigation (Phase II) if necessary. The next stage, the Remedial Investigation (RI), collects additional information about identified contamination in order to determine the type of remedial action needed.<sup>44</sup> Cleanup may be required for the soil, sediment, groundwater and indoor air at a site, and cleanup may be needed during demolition to address issues such as asbestos and lead-based paint. The Remedial Action Workplan (RAW) is the document required under New Jersey law setting forth the remedial action to be undertaken at the site.<sup>45</sup>

The 2009 Site Remediation Reform Act (SRRA) altered significantly the cleanup process. One major change brought about is that the state will *no longer operate a Voluntary Cleanup Program (VCP)*. In the past, the VCP allowed parties to work with the state to remediate non-priority contaminated sites that pose no immediate threat to human health or the environment. Under the VCP the party conducting a cleanup entered into an agreement with the state which detailed the timing and scope of investigations and remediation. Participation was voluntary, and no penalties were assessed if participants chose to withdraw. The new law established an affirmative obligation on the part of persons to remediate any discharge for which they would be liable pursuant to the state's Spill Compensation and Control Act.<sup>46</sup> The Spill Compensation and Control Act exists to protect New Jersey citizens from "the adverse effects of environmental mishaps which may result from spills of petroleum products or other hazardous substances."<sup>47</sup> Through the Act, the state is authorized to levy a tax on the transfer of hazardous substances.<sup>48</sup> The money generated through this tax goes towards the New Jersey Spill Compensation Fund within the New Jersey Department of Environmental Protection, which exists to "insure compensation for cleanup costs and damages when spills occur."<sup>49</sup>

Another big change under the law is that Licensed Site Remediation Professionals, and not the state, will supervise the day-to-day operations associated with most site cleanups,

---

<sup>44</sup> N.J.S.A. 58:10B-1; 13:1K-8.

<sup>45</sup> N.J.S.A. 58:10B-1; 13:1K-8.

<sup>46</sup> N.J.S.A. 58:10B-1.3.

<sup>47</sup> New Jersey Division of Taxation Technical Bulletin, TB-16(R).

<http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb16a.pdf>

<sup>48</sup> Id

<sup>49</sup> Id

pursuant to state standards and time frameworks.<sup>50</sup> State agency approval is no longer required prior to proceeding with remediation. Once LSRPs determine that a cleanup is complete according to the health and environmental standards set forth in state law and rules, they issue a document known as a “Remedial Action Outcome” (RAO).<sup>51</sup> Under the new law, the NJDEP is required to maintain direct NJDEP oversight in cases in which the remediating party does not meet mandatory cleanup deadlines and for those sites that pose the greatest risk to human health and the environment. In those cases, the NJDEP issues a “No Further Action Letter” when remediation is successfully completed.<sup>52</sup>

*Cleanup Standards and Remedies.* New Jersey has established remediation standards designed to minimize harm to public health and the environment.<sup>53</sup> The standards allow for various uses, both residential and nonresidential, and remediation standards are selected taking into account current and future land uses for the site.<sup>54</sup>

There are different ways to comply with the state’s cleanup standards and criteria. New Jersey law expresses a preference for permanent remedies, but also recognizes that it is not always necessary to remove all contamination at a site. NJDEP requires engineering and/or institutional controls when approving a remedial action that proposes to leave some contamination on site. *Engineering controls* are put in place to minimize the potential for direct contact with humans and/or exposure to the environment. Engineering controls can include a fence to block entrance to a contaminated area but most often include either a sufficiently-thick layer of certified clean soil or a hard cap on top of contamination to minimize the potential for direct human contact, or an impermeable cover that stops the rain from leaching contaminants into groundwater. Often, the various surfaces of a proposed redevelopment (i.e. asphalt or concrete pavement, concrete building slabs, landscaped areas underlain certified clean soil, etc.) are utilized as Engineering Controls, thereby integrating the remediation in to the redevelopment. *Institutional controls* are put in place to ensure that sites are used only for their intended purpose and not in a way that could expose people to dangerous pollutants. This may include the use of “proprietary controls,” such as deed restrictions that document the existence of contamination and/or the use of Engineering Controls and addressing how land may or may not be used, or “governmental controls,” such as zoning restrictions, permitting programs, and posting or mailing of public notices.<sup>55</sup> New Jersey regulations

---

<sup>50</sup> N.J.S.A. 58:10C-1 *et seq.* A party who is remediating a discharge from an unregulated heating oil tank is not required to hire an LSRP. N.J.A.C. 7:26C-1.4.

<sup>51</sup> NJSA 58:10C-2, 14.

<sup>52</sup> N.J.S.A. 58:10C-27.

<sup>53</sup> N.J.S.A. 58:10B-12; N.J.A.C. 7:26D. According to the SRRA, remediation standards are “the combination of numeric standards...and narrative standards to which contaminants must be treated, removed, or otherwise cleaned for soil, groundwater, or surface water...in order to meet the health risk or environmental standards. N.J.S.A. 58:10C-2. The Technical Requirements for Site Remediation cover all aspects of the remediation process. N.J.A.C. 7:26E (available at: <http://www.nj.gov/dep/srp/regs/techrule/>).<sup>54</sup> 7:26E-5.1.

<sup>55</sup> U.S. EPA Region 4, *Revitalizing Southeastern Communities: A Brownfields Toolkit* (“Keys to Success”), available at: <http://www.epa.gov/region4/brownfieldstoolkit/index.html>.

set forth the requirements for using Engineering and Institutional Controls as part of remedial actions for contaminated sites (see Text Box below).<sup>56</sup>

New Jersey has established three categories of remedial actions that may be used, reflecting current and future uses and whether the cleanup will use site controls:

- “Unrestricted use remedial action” is any remedial action for soil that does not require the continued use of either engineering or institutional controls to meet the established health risk or environmental standards.
- “Restricted use remedial action” is any remedial action for soil that requires the continued use of engineering and institutional controls in order to meet the established health risk or environmental standards.
- “Limited restricted use remedial action” is any remedial action for soil that requires the continued use of institutional controls but does not require the use of an engineering control in order to meet the established health risk or environmental standards.<sup>57</sup>

For some end uses, “presumptive remedies” apply. When new construction or a change in use is proposed for residential, school, child care, or other purpose that involves use by a “sensitive population,” the remedial action must be an unrestricted use remedy, a presumptive remedial action consistent with the NJDEP’s Presumptive Remedy Guidance on presumptive remedial actions, or an alternate remedy that is pre-approved by the NJDEP.<sup>58</sup> Other types of projects are not required to use a presumptive remedy but can choose to use one. The NJDEP has published numerous technical guidance documents covering various aspects of the cleanup law and regulations. See <http://www.nj.gov/dep/srp/guidance/srra/>.

*The Covenant Not To Sue.* Following issuance of the Remedial Action Outcome by a Licensed Site Remediation Professional, the party responsible is deemed – by law – to have received a covenant not to sue.<sup>59</sup> Obtaining a covenant not to sue is a critical step in the redevelopment of contaminated brownfield properties, as the covenant provides legal protection against further action relating to the cleanup and the contamination that was addressed by the cleanup. Subject to any conditions and limitations contained in the RAO, the covenant not to sue releases the party responsible for the cleanup “from all civil liability to the State to perform any additional remediation, to pay compensation for damage to, or loss of, natural resource, for the restoration of natural resources in connection with the discharge on the property or for any cleanup and removal costs.”<sup>60</sup> The covenant applies to all successors in ownership of the property and to all who lease the property or engage in operations on the property, but it does *not* apply to any discharge that occurs subsequent to the issuance of the RAO.<sup>61</sup> The covenant only

---

<sup>56</sup> N.J.A.C. 7:26E-8.

<sup>57</sup> N.J.S.A. 58:10B-1, 12.

<sup>58</sup> N.J.S.A. 58:10B-12(g); N.J.A.C. 7:26E-5.1(i). See also NJDEP, *Presumptive Remedy Guidance*, available at: [http://www.nj.gov/dep/srp/guidance/srra/presumptive\\_remedy\\_guidance\\_DRAFT.pdf](http://www.nj.gov/dep/srp/guidance/srra/presumptive_remedy_guidance_DRAFT.pdf).

<sup>59</sup> N.J.S.A. 58:10B-13.2.

<sup>60</sup> N.J.S.A. 58:10B-13.2.

<sup>61</sup> N.J.S.A. 58:10B-13.2.

protects against suits by the state. It does not cover liability to private parties, either in tort or for damage to property, nor does it cover liability under federal law.

In cases involving direct oversight of the cleanup by the NJDEP, a covenant not to sue is triggered when the department issues a No Further Action (NFA) letter upon successful completion of the remediation.<sup>62</sup>

*Cost of Cleanup.* The cost of a cleanup depends on many factors. The level, type, and extent of contamination are key determinants. For example, if the ground water under the site is contaminated, the cost of cleanup will likely to be much higher than if just the soil is contaminated. If the contaminated materials need to be transported off site for treatment that will also affect the cost. The cost will also depend on the reuse option selected for the property and the resulting approach/standards that are selected – that is, whether a property is being cleaned to an unrestricted (more expensive) or a restricted (less expensive) standard.<sup>63</sup>

---

<sup>62</sup> N.J.S.A. 58:10B-13.1.

<sup>63</sup> See generally, Environmental Law Institute, A Guidebook for Brownfield Property Owners 39 (1999), available at: [http://www.elistore.org/reports\\_detail.asp?ID=459](http://www.elistore.org/reports_detail.asp?ID=459).

## **Engineering and Institutional Controls in New Jersey**

Under New Jersey's Technical Requirements for Site Remediation, remedial actions that use engineering or institutional controls must demonstrate that: (1) the selected remedial action will remain protective of public health, safety and the environment for as long as contamination exists above an unrestricted use level; (2) access to the site and human exposure to the contamination can be controlled to ensure the protectiveness of the remedial action; and (3) the current and planned future uses of the site will be consistent with all implemented controls. 7:26E-8.1. The state recently established a permit program for remedial actions that require institutional or engineering controls or that include operations and maintenance systems. N.J.S.A. 58:10C-19; N.J.A.C. 7:26C-7.1, *et seq.* Under the program, parties receive a soil remediation action permit and/or a ground water remedial action permit and must comply with all maintenance, monitoring, and evaluation requirements contained in all approved remedial action workplans, remedial action reports, and final remediation documents. N.J.A.C. 7:26C-7.4(a). Permittees must maintain financial assurance to cover the full cost to operate, maintain, and inspect all engineering controls over the life of the permit, though government entities and certain other parties are exempt from this requirement. N.J.A.C. 7:26C-7.7.

Those holding soil remediation action permits must comply with the conditions in each Deed Notice recorded for the property. N.J.A.C. 7:26C-7.5. The state's Technical Requirements for Site Remediation set forth the circumstances under which a Deed Notice is required, as well as the requirements for preparing the Deed Notice. See N.J.A.C. 7:26C-8.1, 8.2. Parties holding a ground water remedial action permit must comply with well restrictions associated with each ground water classification exception area (CEA). N.J.A.C. 7:26C-7.6. CEAs, which are established by the NJDEP as part of a remedial action when groundwater does not meet the state's groundwater quality standards, serves as an institutional control by providing notice that there is groundwater pollution in a localized area caused by a discharge at a contaminated site. N.J.A.C. 7:26E-8.3(a).

A core element of the state's program for monitoring institutional controls is the requirement that all permittees prepare and submit to the NJDEP a biennial certification, and state rules set out the requirements for permittees to conduct periodic inspections to monitor the controls. N.J.A.C. 7:26C-7.4(b), 7:26E-8.5. A covenant not to sue obtained for a property that has engineering or institutional controls in place also includes a requirement for maintenance, monitoring and reporting of those controls, as well as a provision that the covenant is revoked by operation of law if the controls are not being maintained or are no longer in place. N.J.A.C. 58:10B-13.2. In addition to its administrative rules, the NJDEP has developed several guidance documents that must be used when designing remedial actions with institutional controls and/or engineering controls or submitting Deed Notices for approval. See <http://www.nj.gov/dep/srp/regs/deednotice/dnguide.htm>.

While New Jersey requires certain parties to establish a Remediation Funding Source (financial assurance), municipalities and other government entities conducting remediation are exempted from this requirement, as are parties who undertake

remediation in an environmental opportunity zone or who implement an unrestricted use remedial action or a limited restricted use remedial action.<sup>64</sup>

### ***Strategic Considerations for Brownfields Cleanup***

► **Involving the local community in the cleanup process.** The participation of community residents and stakeholders is especially important during the cleanup phase of a brownfields project, as the remediation plan selected will have a direct impact on the health and environment of people living near the site. New Jersey recently adopted new rules requiring parties responsible for the site to provide notice about cleanup activities to people living nearby. Municipal officials can help ensure that these minimum notice and participation requirements are met, that information about the cleanup process reaches all affected community members, and that residents and stakeholders are afforded a meaningful opportunity to contribute to the decision-making process. A key component of effective participation is assistance in understanding the technical information used to make cleanup decisions. Resources available to help residents include New Jersey's new Technical Assistance Grants program (<http://www.state.nj.us/dep/srp/guidance/srra/>) and the Technical Assistance to Brownfields Communities program run by the N.J. Institute of Technology (<http://www.njit.edu/tab/>).

#### **Site Remediation and Public Outreach: New Jersey Legal Requirements**

In 2008, NJDEP amended its Technical Requirements for Site Remediation to encourage communication among all parties affected by a site remediation. N.J.A.C. 7:26E-1.4. The new rules require public notification of ongoing remedial action at sites subject to departmental oversight and create a mechanism for public participation in the remediation process. The NJDEP has provided information on the rules on its website:

[http://www.nj.gov/dep/srp/guidance/public\\_notification/](http://www.nj.gov/dep/srp/guidance/public_notification/). Under the new rules, parties responsible for conducting site investigation and/or cleanup must, among other things:

- **Notify owners and residents of cleanup activities.** The person responsible for conducting the remediation must provide public notice, either by posting a sign or by sending periodic notification letters to owners and tenants, as well as child care and school administrators, located within 200 feet of the site. The rules outline the requirements for each type of notice.
- **Provide additional opportunities for community involvement in certain circumstances.** NJDEP may determine that additional public outreach is needed due to site-specific conditions, or due to "substantial public interest." The department may determine that substantial public interest exists if 25 people who work or live within 200 feet of the site (or the contamination) sign a petition indicating their interest in the cleanup activities, or if a municipal official makes a written request. In such cases, the responsible party must conduct additional public outreach based on the needs expressed by the community. According to the regulations, this outreach may include publicizing and hosting an information session or public meeting; publishing basic site information in the local newspaper, or establishing a local information repository.

Responses received as a result of these public notices must be taken into account by persons responsible for the remediation when they are selecting, developing, and implementing the remedial action. N.J.A.C. 7:26E-5.1.

<sup>64</sup> NJAC 7:26C-5.2(b).



► **Researching Cleanup Options.** There are many approaches to site cleanup and many types of technologies that can be utilized. Site-specific factors will influence the types of technologies that are best suited for a particular property. Both EPA and the state of New Jersey can help municipal officials and community stakeholders understand the available cleanup approaches and technologies. EPA provides information online about numerous remediation technologies, including information designed for citizens. See <http://www.epa.gov/superfund/remedytech/>. In addition, EPA had created the Brownfield and Land Revitalization Technology Support Center to help decision-makers evaluate strategies for streamlining site investigation and cleanup; identify and review information about complex technology options; evaluate contractor capabilities and recommendations; and explain complex technologies to communities. See <http://www.brownfieldstsc.org/>.

► **Working with Environmental Consultants.** Under the new law, site remediation is to be overseen by a Licensed Site Remediation Professional. It is possible to use the same firm that conducted the environmental site assessment, if that firm provides LSRP services. The state maintains a listing of LSRPs (currently the list is for those who have obtained a temporary license pending establishment of the permanent program). The list is available on the NJDEP Data Miner site ([http://datamine2.state.nj.us/DEP\\_OPRA/OpraMain/categories?category=SRRA](http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=SRRA)). Although the state is responsible for licensing qualified professionals, it is important to conduct a thorough search to identify a consultant that is well suited to the project (see Chapter Five).

► **Monitoring Site Controls Following Cleanup.** A number of tools are available for keeping track of site controls. Currently, the i-MapNJ database can be used to access information about certain institutional controls in New Jersey (<http://www.nj.gov/dep/gis/depsplash.htm>). GeoWeb can be used for the same purpose (<http://www.state.nj.us/dep/gis/geoweb splash.htm>). Terradex is an example of a private company that performs a similar service through its LandWatch application (<http://www.terradex.com/PublicPages/Services/ServicesHome.aspx>). As noted above, the NJDEP oversees compliance with the requirements for properties with site controls. A report of cases that have not submitted the required biennial certification is available on NJDEP's Data Miner website (<http://www.nj.gov/dep/opra/online.html>).

### ***Resources for Brownfields Cleanup***

Appendix B contains a listing of the key state and federal financial assistance programs that are available to fund various stages of brownfields redevelopment initiatives. Following are resources that are available to municipalities for cleanup activities.

- *Hazardous Discharge Site Remediation Fund (HDSRF).* This fund provides matching grants for public entities to conduct remedial actions. The amount of the match varies depending on the use selected for the site. For example, a matching grant for up to

75% of the costs of an RA is available if the property will be redeveloped for recreation and conservation purposes, while a 50% matching grant is available for affordable housing projects. Public entities may also receive matching grants up to 25% of the cost of a limited restrictive use or unrestrictive use remedial action. Public entities may also receive loans for remedial actions.

- *Environmental Equity Program (E<sup>2</sup>P)*. Loans through this program can help fund remediation and demolition activities associated with brownfields redevelopment projects in NJRA-eligible municipalities. The site must be part of a broader redevelopment plan and the scope and timeline of remediation must be known.
- *Environmental Infrastructure Financing Program*. New Jersey Environmental Infrastructure Trust manages this program in partnership with NJDEP, providing loans for brownfield remediation activities that improve water quality. Projects are eligible for loans at one-quarter or one-half of the market rate and for reduced financing costs.
- *Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund*. Through this fund, housed by NJDEP and administered by NJEDA, municipalities facing financial hardship may apply for loans or grants to upgrade, close, and remediate discharges associated with regulated and unregulated underground storage tanks.
- *New Jersey Redevelopment Investment Fund*. This NJRA program makes available direct loans, real estate equity, loan guarantees, and other forms of credit enhancements for business and real estate ventures in NJRA eligible municipalities.
- *Brownfield Cleanup Grant Program*. This U.S. EPA program funds government entities and nonprofit organizations to carry out cleanup activities at brownfield sites contaminated by petroleum and hazardous substances and contaminants. Site owners may apply for up to \$200,000 per site for up to five sites, and must contribute a 20 percent cost share unless a hardship waiver is obtained.
- *Brownfields Revolving Loan Fund*. Selected municipalities may apply to NJ EDA for low-interest loans for brownfields remediation activities. Funding comes from an initial \$2 million grant capitalized by the U.S. EPA.
- *Community Development Block Grant (CDBG) Program*. This U.S. HUD program provides an annual grant to municipalities on a formula basis and may be used for brownfields-related activities such as site assessment, cleanup, demolition, rehabilitation, and construction. Related programs, the *Section 108 Loan Guarantee Program* and the *Brownfields Economic Development Initiative (BEDI)* are available to finance redevelopment projects that increase economic opportunity for low-income and moderate-income persons or stimulate and retain businesses and jobs that lead to economic revitalization. Funds may be used for a range of activities, but applications are discouraged whose scope is limited only to site acquisition, assessment, and/or remediation, where there is no immediately planned redevelopment.

## CHAPTER EIGHT

### WORKING WITH THE PRIVATE SECTOR TO REDEVELOP BROWNFIELDS

Most brownfield sites ultimately are developed privately or through a public-private partnership. Municipal brownfields programs can facilitate private-sector redevelopment by taking steps to address the unique challenges and opportunities that exist in securing private financing for brownfields development.

In addition to the economic considerations inherent in all real estate development transactions, brownfields redevelopment presents economic risks that financing particularly challenging. The most significant risk is posed by the potential environmental contamination at the site. Where there is uncertainty over the extent and nature of the contamination, there is also uncertainty about liability and about the cost and timing of the cleanup. These uncertainties may deter traditional lending institutions from becoming involved in the early stages of a brownfields redevelopment project or may result in financing terms that make a project unfeasible or create significant financing gaps.<sup>65</sup> Potential developers may be unwilling to pursue a brownfields project in the face of the greater financial risks and uncertainties over returns on their investment.

#### **Real Estate *Pro Forma*: The Financial Bottom Line**

A real estate *Pro Forma*, or financial statement, is a tool that is used to communicate all the relevant information about a real estate development project. It balances the costs of a project against the flow of income which the project will produce. The pro forma represents the basic financial analysis that developers use to decide whether to move forward with a project, and it is through the pro forma that municipalities and private developers work out the details of a brownfields redevelopment partnership.

The preceding chapters of this handbook have discussed actions that municipalities can take to reduce the risks and uncertainties of brownfields redevelopment – both to advance public sector redevelopment projects and to create a stronger foundation for facilitating private redevelopment.

- *Working with community stakeholders* throughout the process to create a broad base of support for redevelopment;
- *Coordinating among local government agencies* to solidify government support and streamline municipal and state decision-making;
- *Developing a vision* for site reuse to help guide the project and ensure that community needs will be addressed; and

---

<sup>65</sup> For more detailed information on lending institutions and the risks posed by brownfields, see the New Jersey Institute of Technology's Technical Assistance for Brownfields website, <http://www.njit.edu/tab/managing/brownfield/index.php>.

- *Assisting in assessment and cleanup activities* at brownfields to clarify cleanup costs or to address cleanup before financing is pursued.

There are a number of other steps that municipal agencies can take to spur private redevelopment of brownfield properties that are publicly or privately owned.

### ***Strategic Considerations for Facilitating Private Investment in Brownfields Redevelopment***

► **Educating developers about federal and state financial assistance programs.** In many cases, private parties will be eligible for federal and state grants, loans, tax credits, and other forms of financial assistance for brownfields assessment, cleanup, and redevelopment. For properties that present significant risks and obstacles to redevelopment, combining different financing mechanisms from the public and private sectors can help build an economically sound project. Municipal agencies can spur redevelopment by providing owners and developers with timely and practical information about how to access key federal and state programs that are targeted to the private sector. These programs are highlighted at the end of the chapter and included in Appendix B.

► **Leveraging municipal funds to facilitate private financing of brownfields redevelopment.** In some cases, a small amount of public funding can make the difference in whether a private redevelopment project goes forward. In addition to linking developers with federal and state programs, local governments in New Jersey can create financial incentives for redevelopment. Municipalities can, for example, target fees, fines, or other local revenues for redevelopment projects.

Another type of local financing tool available for brownfields projects is *tax increment financing*. As part of the New Jersey Economic Stimulus Act of 2009, the state legislature established the Economic Redevelopment and Growth (ERG) Grant Program. The program is similar to tax increment financing, whereby estimated incremental tax revenues derived from qualified redevelopment projects are redirected to developers to defray a portion of the project costs. The program provides incentive grants to redevelopment projects in “qualifying economic redevelopment and growth grant incentive areas” to fill in financing gaps for the projects. Developers can apply for an incentive grant up to 75% of the annual incremental state tax and/or local tax revenue. (See

[http://www.njeda.com/web/Aspx\\_pg/Templates/Npic\\_Text.aspx?Doc\\_Id=1186&menuid=1424&topid=718&levelid=6&midid=1175](http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=1186&menuid=1424&topid=718&levelid=6&midid=1175).)

Any New Jersey municipality that has designated a redevelopment area may also (either directly or through application to the NJEDA) issue tax-exempt bonds to fund the infrastructure and remediation portion of a redevelopment project. The municipality may provide a tax abatement and establish a *payments in lieu of taxes* agreement with the developer to pay the debt service on the bonds.<sup>66</sup>

---

<sup>66</sup> N.J.A.C. 40A:12A-66.

### Working with Private Developers through Redevelopment Agreements

As noted earlier, New Jersey municipalities are authorized under state law to designate Redevelopment Areas and to promote redevelopment in those areas through actions including the exercise of eminent domain. Certain state and local financing mechanisms are specifically designed for Redevelopment Areas, as described at the end of this chapter and in Appendix B. The *Redevelopment Agreement* is a contract between the designated municipal redevelopment authority and a developer to implement all or part of the Redevelopment Plan. The agreement details the responsibilities of the municipality and the developer, as well as the timing and oversight mechanisms for carrying out the project.

#### ► Understanding the role of insurance in facilitating brownfields redevelopment.

Environmental insurance can help satisfy regulatory responsibilities, minimize liability for contamination, and facilitate brownfields acquisition or sales. Insurance can also help procure loans by providing lenders with the certainty that borrowers will have enough money to pay back the loans. Types of insurance for brownfields projects include: (1) *environmental remediation insurance*, to protect against releases that took place before the writing of the policy, but are discovered afterwards; (2) *stop-loss or cleanup cost-cap coverage*, to protect against cleanup costs that far exceed the estimated cleanup costs; (3) *pollution legal liability insurance*, to protect against migration of contamination to other sites or against third-party and property injury claims, and (4) *secured creditor insurance*, to insure the balance of loans when the borrower defaults and there is an environmental condition on the property.<sup>67</sup> Municipalities can help private developers by providing information about the types of insurance and by linking small developers or site owners with insurers.

#### ► Clarifying the liability considerations for developers who acquire brownfield sites.

Under New Jersey law, an entity that is “in any way responsible” for hazardous substances is strictly liable for all cleanup and removal costs.<sup>68</sup> As noted in Chapter Six, local governments may be eligible for relief from liability under both state and federal law where there is an “involuntary acquisition” or other acquisition to promote redevelopment. The law also provides certain defenses to liability for private parties. For example, those who acquire property subsequent to the discharge and are not in anyway responsible for the contamination may qualify for an innocent landowner exception to liability if they meet detailed requirements set out in the law, including the completion of the preliminary assessment (PA), and, if necessary, a Site Investigation (SI) at the time of purchase.<sup>69</sup>

---

<sup>67</sup> See National Association of Local Government Environmental Professionals and Northeast-Midwest Institute, *Unlocking Brownfields: Keys to Community Revitalization* 123-124, available at: <http://www.resourcesaver.com/file/toolmanager/CustomO93C337F65023.pdf>; Env. Law Inst., *A Guidebook for Brownfield Property Owners* 15, available at: [http://www.elistore.org/reports\\_detail.asp?ID=459](http://www.elistore.org/reports_detail.asp?ID=459).

<sup>68</sup> N.J.S.A. 58:10-23.11g(c)(1).

<sup>69</sup> N.J.S.A. 58:10-23.11g (d).

The law also provides relief from liability for the payment of natural resource damages and restoration of natural resources, for an owner who acquired the real property after the hazardous substance discharge, was not in any way responsible for discharge, and has not contracted to pay the damages or to restore lost or damaged natural resources.<sup>70</sup> Additionally, lenders who do not participate in the management of a project will generally not be deemed a responsible party (and thus liable for cleanup) solely by virtue of their security interest in the project.<sup>71</sup>

Federal law also provides defenses to Superfund liability in certain circumstances. Entities that acquire property and had no knowledge of the contamination at the time of purchase may be eligible as an *innocent landowner* if they conducted all appropriate inquiries (AAI) prior to purchase and complied with other pre- and post-purchase requirements, as discussed in Chapter Five. A *bona fide prospective purchaser* defense is available to persons who acquire property, even if they know or have reason to know of contamination on the property, provided they meet eight threshold criteria (including AAI) spelled out in the federal regulations, comply with ongoing obligations, and do not impede the performance of a response action or natural resource restoration. The *contiguous property owner* defense applies to those who own property that may be contaminated but is not the original source of the hazardous substance contamination, provided the landowner does not know (or have reason to know) prior to purchase, that the property is or could be contaminated.<sup>72</sup>

► **Working with Community Development Entities.** Community Development Corporations (CDCs) play an important role in neighborhood revitalization, which may include the purchase and redevelopment of brownfield properties. Municipalities can work with CDCs to help build their capacity and to connect them with federal, state, and other brownfields resources. Many of the financial resources listed in Appendix B and at the end of this chapter are available to nonprofit corporations. In addition, CDCs can seek technical support from non-governmental organizations in New Jersey. Some of the organizations described in Chapter Two – in particular the Housing and Community Development Network of New Jersey and the National Center for Neighborhood and Brownfields Redevelopment – help build capacity of CDCs and other community-based organizations. Another organization, the Local Support Initiatives Coalition (LISC) has an office in Newark & Jersey City that provides technical assistance to CDCs, helps guide CDC projects through city and state processes, and creates opportunities for public and private sector lenders to support the work of CDCs. (See [http://www.lisc.org/content/offices/detail/609/.](http://www.lisc.org/content/offices/detail/609/))

---

<sup>70</sup> N.J.S.A. 58:10-23.11f.22 (a).

<sup>71</sup> N.J.S.A. 58:10-23.11g5. A holder of a security interest is considered to be actively participating in the management, while the borrower is still in possession, only if the holder exercises decision making or managerial control over the enterprise as described in state law. N.J. Stat. Ann. 58:10-23.11g4.

<sup>72</sup> See CERCLA Sec. 107, 42 U.S.C. 9607; U.S. EPA, “Landowner Liability Protections,” available at: <http://www.epa.gov/oecaerth/cleanup/revitalization/landowner.html>.

► **Creating a strong marketing campaign to reach developers.** Marketing is a key step for municipalities that own brownfield sites and wish to make the sites available for redevelopment in the private sector. The focus of a marketing campaign will vary depending on the characteristics of the site, the stage at which the municipality is seeking to transfer the site, and the actions that have been taken to address site conditions. In all cases, marketing efforts will benefit from a clear vision for the property, developed in concert with a broad range of community stakeholders. Local and state economic development officials can bring important experience to the marketing effort, including contacts with key business associations and groups whose members may be interested in the properties. For large projects, the municipality may consider hiring a consultant or attorney to assist in preparing detailed materials to explain the site conditions and context.<sup>73</sup>

There are a variety of avenues for disseminating marketing materials for brownfield sites. The New Jersey SiteMart provides a free listing of brownfields. Many municipalities have developed web pages that highlight available brownfield properties. A municipality can also create a list of tax-delinquent brownfield properties subject to municipal foreclosure and publicize the list to potential developers. The city of Milwaukee created such a list and provides the public with basic information about the process through which the properties could be foreclosed and then transferred to a private developer.<sup>74</sup> Marketing of brownfield sites can be done through a formal municipal procurement process via a Request for Proposals.

### ***Key Resources for Facilitating Private Financing***

Appendix B contains a listing of the key state and federal financial assistance programs that are available to fund various stages of brownfields redevelopment initiatives. The following programs provide financial assistance directly to *private* entities in the form of general project financing or grants and loans for specific aspects of brownfields redevelopment, such as site cleanup.

- *Brownfields and Contaminated Site Remediation Reimbursement Program.* Through this program, developers enter into a Redevelopment Agreement with the NJEDA and are eligible for up to 75% reimbursement of approved remediation costs. The developer must be a non-responsible party agreeing to undertake and complete the environmental clean up of the site.
- *Hazardous Discharge Site Remediation Fund (HDSRF).* Innocent parties who meet the criteria spelled out in the program may be eligible for up to 50% of costs for PA, SI, RI, and RA activities, not to exceed \$1 million. The HDSRF is jointly administered by NJDEP and NJEDA.
- *Brownfields Revolving Loan Fund.* Developers in selected municipalities may apply to NJEDA for low-interest loans for brownfields remediation activities. Funding comes from an initial \$2 million grant capitalized by the U.S. EPA.

---

<sup>73</sup> See generally, Commonwealth of Massachusetts, *Smart Growth/Smart Energy Toolkit*, at: [http://www.mass.gov/envir/smart\\_growth\\_toolkit/pages/mod-brownfields.html](http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-brownfields.html).

<sup>74</sup> See City of Milwaukee, *How to Purchase a Tax Delinquent Brownfield in Milwaukee*, at <http://www.mkedcd.org/brownfields/bfhowpurch.html>.

- *Economic Redevelopment and Growth (ERG) Grant Program.* The ERG program provides incentive grants to developers worth up to 75% of the incremental state tax and/or local tax revenue associated with the project. In addition to applying for a local government grant, developers can apply for a state grant from the NJEDA.
- *Fund for Community Economic Development.* NJEDA provides loans to stimulate real estate-based economic development projects in urban and smart growth locations. Loans up to \$50,000 are available for feasibility studies and other pre-development costs. Loans up to \$1.25 million are available to fill financing gaps in the development of community facilities and other projects, including associated environmental remediation costs.
- *Urban Site Acquisition Program.* This is a revolving loan fund administered by the NJRA for the acquisition, site preparation and redevelopment of properties that are part of a larger urban redevelopment plan in NJRA-eligible communities.
- *Environmental Equity Program (E<sup>2</sup>P).* Private and nonprofit developers can apply to the NJRA for loans to help fund planning, site acquisition, remediation, and demolition activities associated with brownfields redevelopment projects in NJRA-eligible municipalities. The site must be part of a broader redevelopment plan and the scope and timeline of remediation must be known.
- *New Jersey Pre-Development Fund.* This fund supports pre-development activities in NJRA-eligible urban communities. The fund covers feasibility studies, architectural costs, environmental and engineering studies, legal and other related soft costs needed for development to proceed.
- *New Jersey Redevelopment Investment Fund.* This program provides a flexible investment fund for business and real estate ventures in NJRA-eligible urban communities. The program makes available direct loans, loan guarantees, and other forms of credit enhancements.
- *NJRA Bond Program.* NJRA issues bonds for making long-term loans at below-market interest rates to qualified businesses and non-profit organizations for redevelopment projects in NJRA-eligible urban communities. Proceeds from tax-exempt bonds may be used for land and building acquisition, new construction or expansion, purchase of new equipment, and debt/refinancing and working capital.
- *Municipal Landfill Closure and Remediation Reimbursement Program.* NJEDA reimburses eligible developers up to 75% of the closure or clean up costs associated with the remediation and redevelopment of a municipal solid waste landfill. Reimbursement moneys are derived from one-half of the sales tax revenues generated from any business located on the site.
- *New Markets Tax Credit Program.* This U.S. Department of the Treasury Program permits taxpayers to receive a tax credit for making qualified equity investments in approved Community Development Entities, who in turn use the funds to provide investments in low-income communities.



## APPENDIX A

### SELECTED STATE AND FEDERAL AGENCIES

#### State Agencies

##### **New Jersey Department of Community Affairs (DCA)**

<http://www.nj.gov/dca/>  
609-292-6420

Provides administrative guidance, financial support and technical assistance to local governments, community development organizations, businesses and individuals to improve the quality of life in New Jersey.

##### **DCA Office of Smart Growth (OSG)**

<http://www.nj.gov/dca/divisions/osg/>  
609-292-7156

The OSG coordinates planning throughout New Jersey to protect the environment and guide future growth into compact, mixed-use development and redevelopment. The Office implements the goals of the State Development and Redevelopment Plan to achieve comprehensive, long-term planning; and integrates that planning with programmatic and regulatory land-use decisions at all levels of government and the private sector.

##### **Brownfields Redevelopment InterAgency Team (BRIT)**

<http://www.nj.gov/dca/divisions/osg/commissions/brit.html>

The Brownfields Redevelopment Interagency Team (BRIT) is made up of representatives of numerous state agencies and introduces projects to all affected state agencies and departments. The BRIT enables and facilitates dialogue among the state, the municipality, and the developer.

##### **Brownfields Redevelopment Task Force**

<http://www.nj.gov/dca/divisions/osg/commissions/brtf.html>

The Brownfields Redevelopment Task Force, created by statute, is a thirteen-member group that consists of seven representatives from state agencies and six public members appointed by the governor. The Task Force coordinates state brownfields policy, inventories and markets brownfields, and promotes brownfields redevelopment generally.

##### **New Jersey Department of Environmental Protection (NJDEP)**

<http://www.state.nj.us/dep>  
866-337-5669 or 609-777-3373

NJDEP's mission is to preserve the ecological integrity of the state and maintain and transform places into healthy, sustainable communities.

##### **Site Remediation Program (SRP)**

<http://www.nj.gov/dep/srp/>  
609-292-1251

The Site Remediation Program administers state laws and regulations governing contaminated site cleanup.

**Brownfields Remediation and Reuse Element (BRRE)**

<http://www.nj.gov/dep/srp/brownfields/>  
609-292-1251

The BRRE is charged with coordinating the agency's remediation and reuse efforts at brownfield sites, including piloting innovative approaches to streamline the revitalization process and administering various incentive programs.

**Office of Planning and Sustainable Communities**

<http://www.state.nj.us/dep/opsc/>  
(609) 341-5311

This office works with other state agencies, regional entities, local governments and other groups to incorporate sustainable development principles into all levels of land use and environmental planning.

**New Jersey Economic Development Authority (NJEDA)**

[www.njeda.com/web/Aspx\\_pg/Templates/Npic\\_Text.aspx?Doc\\_Id=876&menuid=1258&topid=718&levelid=6&midid=1175](http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=876&menuid=1258&topid=718&levelid=6&midid=1175)  
609-292-1800

The NJEDA seeks to strengthen New Jersey's economy by retaining and growing businesses through financial assistance, by renewing communities, and by promoting the state's strategic advantages to attract domestic and international businesses.

**New Jersey Redevelopment Authority (NJRA)**

[www.njra.us](http://www.njra.us)  
609-292-3739

The NJRA develops programs and resources to revitalize urban New Jersey through community-based economic development.

**Federal Agencies**

**Environmental Protection Agency (EPA)**

[www.epa.gov](http://www.epa.gov)

The mission of EPA is to protect human health and to safeguard the natural environment – air, water and land – upon which life depends.

**Brownfields and Land Revitalization Program, EPA HQ**

<http://www.epa.gov/brownfields/>  
202-566-2777

EPA's Brownfields Program is designed to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields.

**Brownfields Program, EPA Region 2**

<http://www.epa.gov/region02/brownfields/>  
212-637-3660

EPA Region provides technical, legal, and information resources and direct assistance to regional brownfields stakeholders, including state agencies, counties, cities, tribes, and community organizations.

**U.S. Department of Housing and Urban Development (HUD)**

<http://www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/index.cfm>

202-708-1112 (HQ)

973- 622-7900 (Newark Field Office)

856-757-5081 (Camden Field Office)

HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD manages the Community Development Block Grant (CDBG) and Brownfields Economic Development Initiative (BEDI) programs, which provide municipalities with funding for community development projects, including brownfields redevelopment.

**Agency for Toxic Substances and Disease Registry (ATSDR)**

<http://www.atsdr.cdc.gov/sites/brownfields/overview.html>

·800-232-4636

ATSDR's mission is to prevent harmful exposures and diseases related to toxic substances by using the best science, taking responsive public health actions, and providing trusted health information. Through its Brownfield/Land Reuse Initiative, ATSDR works to promote a well-rounded approach to redevelopment that incorporates health components and revitalizes communities in an inclusive manner.

## APPENDIX B

### KEY FEDERAL AND STATE BROWNFIELDS FUNDING AND ASSISTANCE PROGRAMS

Following is a listing of many of the core funding and assistance programs available to facilitate brownfields redevelopment in New Jersey. Information about these and other resource can also be found in the following federal and state brownfields resource guides:

- *Brownfields Redevelopment Resource Kit* – a comprehensive guide compiled by the state of New Jersey, covering its varied financial and technical resources. (See <http://www.state.nj.us/dca/divisions/osg/docs/brownfieldsresourcekit.pdf>.)
- *Brownfields Federal Programs Guide* – a compendium of technical and financial assistance available from federal agencies for brownfields and land revitalization projects, published by U.S. EPA in 2009. (See [http://www.epa.gov/brownfields/partners/2009\\_fpg.pdf](http://www.epa.gov/brownfields/partners/2009_fpg.pdf).)

#### NEW JERSEY STATE PROGRAMS

##### **The Hazardous Discharge Site Remediation Fund (HDSRF)**

[www.nj.gov/dep/srp/finance/hdsrf/](http://www.nj.gov/dep/srp/finance/hdsrf/)

The HDSRF was established by state law (N.J.S.A. 58:10B-4) and has been one of the most important mechanisms funding brownfields activities in New Jersey. Jointly administered by NJDEP and NJEDA, the HDSRF provides loans and grants to public, private and non-profit entities for the investigation and/or remediation of sites with known or suspected hazardous substance discharges.

For *public entities* (municipalities, counties, redevelopment agencies) the HDSRF provides grants for PA, SI, and RI activities. The public entity must hold the tax sale certificate, have acquired the property through foreclosure or other similar means, or have acquired or passed a resolution, ordinance or other appropriate document to acquire the property by voluntary conveyance for the purposes of redevelopment. These grants provide for 100% of the eligible costs and are capped at \$3 million per municipality per calendar year. For remediation activities, matching grants are available to public entities to conduct an RA. The amount of the match varies depending on the end use of the site. For example, a matching grant for up to 75% of the costs of an RA is available if the property will be redeveloped for recreation and conservation purposes, while a 50% matching grant is available for affordable housing projects. Public entities may also receive matching grants up to 25% of the cost of a limited restrictive use or unrestricted use remedial action. Public entities may also receive loans for remedial actions.

For *private entities*, innocent parties may be eligible for up to 50% of costs for PA, SI, RI, and RA, not to exceed \$1 million. The program is open to innocent parties who demonstrate that they acquired the property before December 31, 1983; the hazardous substance or hazardous waste that was discharged at the property was not used by the applicant; and the applicant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. Matching grants are also available to those who use innovative cleanup technologies and those who implement a limited restricted use or unrestricted use RA. For two of these matching grants, private applicants must have a net worth of less than \$2 million in order to be eligible.

### **Brownfields and Contaminated Site Remediation Reimbursement Program**

[www.njeda.com/web/Aspx\\_pg/Templates/Npic\\_Text.aspx?Doc\\_Id=876&menuid=1258&topid=718&levelid=6&midid=1175](http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=876&menuid=1258&topid=718&levelid=6&midid=1175);

[http://www.njeda.com/applications/Brownfield\\_Information\\_and\\_Application.pdf](http://www.njeda.com/applications/Brownfield_Information_and_Application.pdf)

This NJEDA program authorizes qualified *developers* to apply for reimbursement of up to 75 percent of certain approved remediation costs that they incur in the process of redevelopment of a Brownfield site located within Planning Areas 1 and 2 as designated by the State Plan.

Developers apply for reimbursement and enter into a redevelopment agreement with the state prior to undertaking the remediation. State reimbursement funds are derived from new retail sales taxes, new Corporate Business Taxes, and other taxes that may or may not apply to the proposed redevelopment project. A complete list of taxes that may be applied towards the reimbursement is provided in the statute. To qualify, a developer must be a non-responsible party agreeing to undertake and complete the environmental cleanup and redevelopment of the site. Applicants are required to provide a detailed summary of the proposed redevelopment project and the ability to generate new sales taxes, including a financial proforma that supports the need for the reimbursement in order to make the project financially viable (the inability to demonstrate financial need for the reimbursable funds would likely result in denial of the application).

### **Brownfields Revolving Loan Fund**

[http://www.njeda.com/applications/NJBRLF\\_FactSheet.pdf](http://www.njeda.com/applications/NJBRLF_FactSheet.pdf)

The NJEDA, in coordination with NJDEP and the NJRA, manages this program, which provides low-interest loans for brownfield remediation activities for *municipalities* and *developers* in 11 designated municipalities – Asbury Park, Camden, Elizabeth, Long Branch, Neptune, New Brunswick, Paterson, Perth Amboy, Plainfield, Pleasantville, and Vineland. Funding comes from an initial \$2 million grant capitalized by the U.S. EPA.

### **Economic Redevelopment and Growth (ERG) Grant Program**

[www.njeda.com/web/Aspx\\_pg/Templates/Npic\\_Text.aspx?Doc\\_Id=1186&menuid=1424&topid=718&levelid=6&midid=1175](http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=1186&menuid=1424&topid=718&levelid=6&midid=1175)

Through the ERG program, NJEDA provides grants to *developers* for real estate development projects that have primary debt financing in place, but that have a financing gap or a below-market development margin or rate of return. The program provides an incentive grant worth up to 20% of the total project costs (including remediation and redevelopment construction, inclusive of certain soft costs) or 75% of the incremental state tax and/or local tax revenue associated with the project. The project must be located in a qualifying area: Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban) as designated by the State Plan, a center designated under the State Development and Redevelopment Plan, transit village, or federally owned land approved for base closure. Local governments may also enter into incentive grant agreements with developers, following approval of the developer's ERG application to the state.

### **Fund for Community Economic Development**

[http://www.njeda.com/web/Aspx\\_pg/Templates/Npic\\_Text.aspx?Doc\\_Id=320&menuid=1194&topid=718&levelid=6&midid=1175](http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=320&menuid=1194&topid=718&levelid=6&midid=1175)

The NJEDA provides loans to private or non-profit *developers* to stimulate real estate-based economic development projects in urban and smart growth locations. Loans up to \$50,000 are available for feasibility studies and other pre-development costs. Loans up to \$1.25 million are available to fill financing gaps in the development of community facilities and other real estate-based economic development projects, including associated environmental remediation costs.

### **NJRA Bond Program**

<http://www.njra.us/njra/cwp/view.asp?a=3&Q=453442>

This program issues bonds for making long-term loans at below-market interest rates to *qualified businesses and non-profit organizations* for redevelopment projects in NJRA eligible urban communities (see <http://www.njra.us/njra/cwp/view.asp?a=3&Q=453505>). Qualifying entities include manufacturing facilities, commercial and industrial projects located in federally designated Empowerment Zones or Enterprise Communities, and certain nonprofit organizations such as those that provide social services, child care, and community facilities. Proceeds from tax-exempt bonds may be used for land and building acquisition, new construction or expansion, purchase of new equipment and machinery, and debt/refinancing and working capital. The bond amount for private manufacturing entities is 750,000 -\$10,000,000, with no upper limit for non-profits.

#### **Urban Site Acquisition Program**

<http://www.njra.us/njra/cwp/view.asp?a=3&Q=453435>

This program, authorized under state law and managed by the NJRA, is a revolving loan fund that provides low-interest, short-term loans to for-profit and nonprofit *developers* and *local governments*. Loans are made for the acquisition, site preparation and redevelopment of properties that are part of a larger urban redevelopment plan in NJRA-eligible urban communities. The program also provides financing for planning and predevelopment costs associated with the development of a neighborhood or redevelopment plan.

#### **New Jersey Pre-Development Fund**

<http://www.njra.us/njra/cwp/view.asp?a=3&Q=453470>

This fund focuses on supporting pre-development activities in NJRA-eligible urban communities. The fund covers feasibility studies, architectural costs, environmental and engineering studies, legal and other related soft costs needed for development to proceed. Funding is available to *developers, non-profits, and government entities*.

#### **New Jersey Redevelopment Investment Fund**

<http://www.njra.us/njra/cwp/view.asp?a=3&Q=453428>

This program provides a flexible investment fund for business and real estate ventures in NJRA-eligible urban communities. The program makes available direct loans, loan guarantees, and other forms of credit enhancements to *developers, non-profits, and government entities*.

#### **Environmental Equity Program (E<sup>2</sup>P)**

<http://www.njra.us/njra/cwp/view.asp?a=3&Q=455913>

NJRA's E<sup>2</sup>P program seeks to advance New Jersey's Smart Growth agenda by facilitating the redevelopment of contaminated properties in urban areas. The program makes loans to *developers, non-profits, and government entities* to assist with the predevelopment stage of brownfields redevelopment projects. Loans help fund planning, site acquisition, remediation, and demolition activities associated with brownfields redevelopment projects in NJRA-eligible urban communities. The site must be part of a broader redevelopment plan and the scope and timeline of remediation must be known.

#### **Environmental Infrastructure Financing Program**

<http://www.njeit.org/brownfield.htm>

This legislatively-created program is managed by the New Jersey Environmental Infrastructure Trust in partnership with NJDEP. The EIFP leverages federal funding to provide low-interest loans to *municipalities* for infrastructure projects that benefit water quality and drinking water safety. All water quality improvement components of a proposed brownfields remediation project are eligible, such as: site cleanup, treatment of contaminated groundwater, landfill closure, and

open space acquisition. Brownfields remediation projects are eligible for loans at one-quarter or one-half of the market rate and for reduced financing costs.

**Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund.**

<http://www.nj.gov/dep/srp/finance/ustfund/>

This fund is housed by NJDEP and administered by NJEDA. It provides loans and grants to *business owners, homeowners, and municipalities* that face particular financial hardship to upgrade, close, and remediate discharges associated with both regulated and unregulated underground storage tanks.

**Municipal Landfill Closure and Remediation Reimbursement Program**

[http://www.njeda.com/web/Aspx\\_pg/Templates/Npic\\_Text.aspx?Doc\\_Id=875&menuid=1257&to pid=718&levelid=6&midid=1175](http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=875&menuid=1257&to pid=718&levelid=6&midid=1175)

This NJEDA program provides eligible *developers* with reimbursement of 75% of the closure or clean up costs associated with the remediation and redevelopment of a municipal solid waste landfill. Reimbursement moneys are derived from one-half of the new sales tax revenues generated from any business located on the site.

**Green Acres Program**

<http://www.nj.gov/dep/greenacres/>

This program, administered by NJDEP, provides low-interest loans and grants to municipalities to facilitate acquisition of open space and development of outdoor recreational facilities. Green Acres encourages reclamation and restoration of former brownfields for use as public spaces, awarding such projects one point in its scoring formula.

**Low Income Housing Tax Credit program.**

<http://www.state.nj.us/dca/hmfa/biz/devel/lowinc/>

This federal tax credit program offers a dollar-for-dollar reduction in federal tax liability to mitigate the debt burden incurred in the construction and rehabilitation of affordable housing. The program is implemented by each state, which has a certain dollar amount of tax credits available for projects within the state and which establishes criteria for judging applications. The New Jersey Housing & Mortgage Finance Agency ([www.nj.gov/dca/hmfa](http://www.nj.gov/dca/hmfa)) administers the competitive program in New Jersey and has established a point-based system that awards points for projects developed on brownfields sites.

FEDERAL PROGRAMS

**Brownfields Assessment Grants**

[http://www.epa.gov/brownfields/assessment\\_grants.htm](http://www.epa.gov/brownfields/assessment_grants.htm)

This core EPA brownfields funding program awards grants to *governmental entities* for inventorying, characterization, assessment, planning, and community involvement activities related to brownfield sites. Municipalities may apply for a site-specific grant or a community-wide assessment grant if a specific site has not been identified or if the assessment will address more than one site within the community. The program provides up to \$200,000 to assess a site contaminated by hazardous substances and up to \$200,000 to address a site contaminated by petroleum, unless a waiver is sought to increase the amount to \$350,000 due to the level of contamination. No matching funds are required, but priority is given to projects that: stimulate availability of other funding, stimulate economic development, facilitate the reuse of exiting infrastructure, preserves space for non-profit use, meets the needs of population and resource deficient communities, and reduces threats to the health and welfare of people.

### **Targeted Brownfield Assessment**

[http://www.epa.gov/brownfields/grant\\_info/tba.htm](http://www.epa.gov/brownfields/grant_info/tba.htm)

Under this direct assistance program, EPA (through its regional offices) directs a contractor to conduct environmental assessment activities that can include Phase I and Phase II assessments, and evaluation of cleanup options and/or cost estimates based on future uses and redevelopment plans. Governmental entities and non-profits may apply for assistance, but properties where the owner is responsible for the contamination are not eligible unless there is a clear means of recouping EPA expenditures.

### **Brownfield Cleanup Grants**

[http://www.epa.gov/brownfields/cleanup\\_grants.htm](http://www.epa.gov/brownfields/cleanup_grants.htm)

This EPA program funds *government entities and non-profit organizations* to carry out cleanup activities at brownfield sites contaminated by petroleum and hazardous substances and contaminants. Site owners may apply for up to \$200,000 per site for up to five sites, and must contribute a 20 percent cost share in the form of money, labor, material, or services. Applicants may request a waiver of the cost share requirement based on hardship. Priority is given to projects that: stimulate availability of other funding, stimulate economic development, facilitate the reuse of existing infrastructure, preserves space for non-profit use, meet the needs of population and resource deficient communities, and reduce threats to the public health and welfare. Grant funds must be used within two years.

### **Revolving Loan Fund Grants**

<http://www.epa.gov/brownfields/rlflst.htm>

EPA's competitive Revolving Loan Fund Grant program makes funds available to municipalities and other government entities to capitalize a revolving loan fund that in turn provides low- or no-interest loans for brownfield cleanup activities. Grants are available up to \$1 million and require a 20 percent cost share in the form of a contribution of money, labor, material, or services.

### **Community Development Block Grant Program (CDBG)**

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/>

<http://www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/index.cfm>

The U.S. Department of Housing and Urban Development (HUD) provides an annual grant to municipalities with populations over 50,000 or identified central cities of metropolitan areas ("entitlement communities"). Funds are awarded on a formula basis and may be used for brownfields-related activities such as site assessment, cleanup, demolition, rehabilitation, and construction. Non-entitlement communities may receive CDBG funds through their state (in New Jersey, the Department of Community Affairs, Division of Housing and Community Resources).

CDBG grantees may also apply for other, related funding that is relevant to brownfields redevelopment. For example, the **Section 108 Loan Guarantee Program** provides entitlement communities with up to five times their annual CDBG allocation in guaranteed loans for brownfields redevelopment activities. Activities eligible for financing include all economic development activities eligible under CDBG, acquisition of real property, and rehabilitation of publicly owned real property. The **Brownfields Economic Development Initiative (BEDI)** is a competitive grant program whose funds are to be used in conjunction with Section 108 loan guarantees to enhance the viability of a redevelopment project. BEDI projects must increase economic opportunity for persons of low- and moderate-income or stimulate and retain businesses and jobs that lead to economic revitalization. Funds may be used for a range of activities, but applications are discouraged whose scope is limited only to site acquisition and/or remediation,



where there is no immediately planned redevelopment. Public entities may re-loan their Section 108 loan proceeds and provide their BEDI funds to a business or other entity to carry out an approved economic development project, or the public entity may carry out the eligible project itself.

### **Brownfields Job Training Grants**

<http://www.epa.gov/brownfields/applicat.htm>

This annual EPA grant competition provides funding to local governments and nonprofit organizations to recruit, train, and place unemployed and under-employed residents of brownfields-impacted communities. The focus is on teaching environmental assessment and cleanup job skills, helping residents living near brownfield sites to secure full-time employment in the environmental field.

### **Community Challenge Planning Grants**

<http://www.hud.gov/offices/adm/grants/nofa10/huddotnofa.cfm>

Federal legislation established this major new HUD funding program, which was announced in 2010. The program provides grants to consortia of public, private, and non-profit entities to support “regional planning efforts that integrate housing, land use, economic and workforce development, transportation, and infrastructure investments in a manner that empowers jurisdictions to consider the interdependent challenges of economic competitiveness and revitalization; social equity, inclusion, and access to opportunity; energy use and climate change; and, public health and environmental impacts.” Although not directed explicitly at brownfields redevelopment, the program’s goals are aligned with brownfields redevelopment goals, and grants provided can help support some of the planning efforts that are important to creating the framework for a successful brownfields initiative.

## APPENDIX C

### BROWNFIELDS CASE STUDIES

Following are selected publications and web sites that provide examples of brownfields projects generally, by re-use option, and by type of property.

#### **General**

U.S. Conference of Mayors

*Reclaiming the Land, Revitalizing Communities: Brownfields Redevelopment Best Practices*  
[usmayors.org/brownfields/library/brownfieldsbestpracticesvol207.pdf](http://usmayors.org/brownfields/library/brownfieldsbestpracticesvol207.pdf)

State of New Jersey

Listing of brownfields success stories, by county or by name of the project

<http://www.state.nj.us/dep/srp/brownfields/success/>

#### **Specific Re-use Options**

Nat'l. Assoc. of Local Government Environmental Professionals and Northeast-Midwest Institute

*Unlocking Brownfields: Keys to Community Revitalization*, (various re-use options, pp 59-111)

<http://www.resourcesaver.com/file/toolmanager/CustomO93C337F65023.pdf>

U.S. EPA

Informational brochures with case studies on the benefits of converting brownfields to greenspace

[http://epa.gov/swerosps/bf/success/Green\\_Space.pdf](http://epa.gov/swerosps/bf/success/Green_Space.pdf)

[http://epa.gov/brownfields/success/ss\\_green.pdf](http://epa.gov/brownfields/success/ss_green.pdf)

[http://epa.gov/brownfields/success/ss\\_recre.pdf](http://epa.gov/brownfields/success/ss_recre.pdf)

U.S. EPA

*How Does Your Garden Grow?*

Information on redeveloping brownfields as community gardens

[http://www.epa.gov/brownfields/success/local\\_ag.pdf](http://www.epa.gov/brownfields/success/local_ag.pdf)

#### **Specific Types of Properties**

U.S. EPA

Sector-based Initiatives; Links to publications on specific types of redeveloped properties

[http://epa.gov/brownfields/policy/initiatives\\_sb.htm](http://epa.gov/brownfields/policy/initiatives_sb.htm)

U.S. EPA

Underground Storage Tanks: Lessons Learned, Best Practices

Links to success stories on cleaning up gas stations and other petroleum contaminated sites

<http://www.epa.gov/oust/petroleumbrownfields/pbsuccess.htm>