

Brownfields

Partnering For A Greener Tomorrow

Track Three: Finance

PURPOSE OF THE TRACK

Finance is an integral component of the brownfields program. Learn where to find money and how to get it, by exploring tools available to local governments, environmental banking, investment opportunities, due diligence requirements, site assessments, the role of foundations and nonprofit organizations, and leveraging of public financing with private financing. Learn how the private sector views the cleanup and redevelopment of brownfields and how to attract new businesses to your community.

**(3A) Closing the Gap: How
Non-Profits Fit in the Brownfields Equation**

Thursday, September 4, 1997

3:00 p.m. - 5:00 p.m.

Description: There is a gap in service between public- and private-sector support for brownfields. Panelists will explore the role that non-profit organizations can play in addressing local brownfields needs.

Location: Room 2203

Speakers and Affiliation:

Mr. Keith Welks (Moderator)

Ms. Martha Matsuoka

Ms. Ellyn McKenzie

Dr. Charles W. Powers

Mr. Bruce Rasher

Center for Land Renewal

Urban Habitat Program of Earth Island Institute

Sixteenth Street Community Health Center of Milwaukee,
Wisconsin

Institute for Responsible Management

Consumers Renaissance Development Corporation

MR. KEITH WELKS

[Biography was not available at time of printing. Please refer to conference addendum.]

MS. MARTHA MATSUOKA

[Biography was not available at time of printing. Please refer to conference addendum.]

MS. ELLYN MCKENZIE

Ellyn McKenzie is currently assistant director of the Department of Environmental Health at the Sixteenth Street Community Health Center. The center serves residents of the culturally diverse near the south side of Milwaukee. Its mission is to provide health care, health education, and social services to individuals who, because of cultural, financial or language barriers, would be without or have difficulty accessing these services.

Ms. McKenzie has held a number of public policy and communication outreach positions within Wisconsin state, local government, and the private sector. She directed legislative affairs activities and an issues management campaign for Zigman, Joseph, and Stephenson, a Milwaukee based public relations firm. She also was lead lobbyist for the Wisconsin Federation of Cooperatives (WFC) serving WFC members on healthcare, mutual insurance, housing, and credit union issues. In the mid-1980's, Ms. McKenzie served as Governor Earl's State Senate liaison and provided staff assistance to the governor on national environmental issues. She served as the governor's staff representative to the National Governors' Association of Energy and Environment Committee, the Alliance for Acid Rain Control, and the Center for Clean Air Policy Analysis chaired by Governor Earl. She also served as the governor's representative to the National Groundwater Policy Forum.

DR. CHARLES W. POWERS

Charles W. Powers, Ph.D. is president of the Institute for Responsible Management, a non-profit organization in New Brunswick, New Jersey which is focused primarily on charting and facilitating information exchange among the more than 100 U.S. Environmental Protection Agency (EPA) brownfields pilots. Dr. Powers, who is also a professor of environmental and community medicine at the University of Medicine and Dentistry of New Jersey, has been addressing issues related to hazardous waste since 1984. He has created a series of national organizations which address both technological and social issues related to controversial problems in public health and the environment. He has been executive director of the Health Effects Institute, president of Clean Sites, Inc. chief environmental officer and vice president for public policy at Cummins Engine Company and has held faculty appointments at Yale, Harvard, Tufts, and Princeton universities.

MR. BRUCE RASHER

Mr. Rasher has more than 20 years' experience as an environmental professional responsible for a variety of environmental programs, such as air quality, remediation management and due diligence for Consumers Energy, the nation's fourth largest combined electric and gas utility. He holds the positions of director of brownfields redevelopment for the utility and vice president, secretary and treasurer of the nonprofit Consumers Renaissance Development Corporation, and is responsible for providing brownfields education, community assistance and transaction facilitation services in cooperation with the State of Michigan and the Michigan Municipal League. Mr. Rasher is also chairman of the Edison Electric Institute's Manufactured Gas Plant Subcommittee. Mr. Rasher has served as a local elected official for more than 10 years, with experience in community planning, public utilities and economic development, and is currently serving his second term as the mayor of the City of Marshall, Michigan.

**DOCUMENTS THAT SUPPORT
PANEL 3A: CLOSING THE GAP: HOW
NON-PROFITS FIT IN THE BROWNFIELDS EQUATION**

U.S. Environmental Protection Agency

**Brownfields '97
Partnering for a Greener Tomorrow**

**September 3-5, 1997
Kansas City, Missouri**

**Brownfields Redevelopment
Tools for Environmental Justice**

***City of Dallas
Brownfields Program
Involvement Approach***

**For copies contact:
Beverly Negri
EPA Brownfields Liaison
Telephone- (214) 665-8157
Fax- (214) 665-6660**

Reprint permission is given to the U.S. Environmental Protection Agency, and its contractors, to include this paper in the *Brownfields '97* participants binder.

**City of Dallas
Brownfields Program**

Community Involvement Approach

- **Designed to assist citizens and businesses to acquire a comprehensive understanding of the barriers surrounding the assessment, cleanup, revitalization and reuse of brownfields.**

Encourage community participation in the identification of potential redevelopment sites.

- **Assist in determining resolutions for the City's Brownfields challenges and redevelopment barriers.**
- **Provide neighbors living in the vicinity of a brownfields redevelopment site the opportunity to understand and comment on the potential environmental cleanup and planned site reuse.**
- **Reach out to commercial, private, neighborhood and industry in order to educate, inform, receive feedback and input from Dallas citizens.**

Citizen Advisory Focus Groups

- **Initially, four environmental justice neighborhoods were identified as the target areas for the initial series of the Citizen Advisory Focus Group meetings. After consultations with the neighborhood leaders, the target neighborhoods increased in number - six neighborhoods - and geographic size (see attached map).**
- **The Brownfields Program staff met with several well-known and respected environmental justice leaders in the City to discuss the strategy for the most inclusive community participation.**
- **In order to ensure the meeting agendas, dates and locations were determined by the community members, several minority Spanish-speaking facilitators were hired by the City to assist in capturing and recording information and ideas generated in all of the meetings.**
- **In each target neighborhood, a series of two or three meetings involving neighborhood leaders were held prior to the larger community meetings, for a total of 19 leaders meetings, in order to determine the specific agenda interests in each community and the best locations and times for the meetings.**
- **In Phase I, six large community meetings were held in the target communities in areas across the City.**

- City held the Citizen Advisory Focus Group leaders and large neighborhood meetings to:
 - inform the citizens about the Brownfields Program;
 - convey information on other City programs that address environmental-economic neighborhood concerns;
 - ask community members to identify potential redevelopment sites in their neighborhoods;
 - collect neighborhood-specific environmental/economic concerns; and
 - include the neighborhoods as partners in the Brownfields Program.
- After the first phase of meetings, the Brownfields staff compiled an informational database of the potential redevelopment locations along with a listing of other environmental concerns raised by the participants.
- The Brownfields Staff contacted all of the owners of the community-identified potential redevelopment sites to discuss the communities reuse suggestions and concerns and also offer the property owners the assistance and possible incentives of participating in the Brownfields Program.
- In Phase II, the Brownfields Program staff scheduled a second round of large community meetings and invited all of the original community leaders, meeting participants and other additional citizens to attend the second round of large community meetings.
- The meetings agendas included the results of the informational database followup, the results of contacting the owners of the potential redevelopment sites and the next actions of the Program.
- A second series of Citizens Advisory Focus Groups in new target neighborhoods is tentatively planned for late fall 1997.

City of Dallas Brownfields Forum

- Forum participants include environmental liability insurance reps, banking regulators, mortgage loan officers, environmental lawyers, environmental consultants, business associations, developers, realtors, Chambers of Commerce, Federal Deposit Insurance Corporation, Texas Natural Resource Conservation Commission, EPA, Housing and Urban Development, private citizens, environmental justice representatives, neighborhood associations, private non-profit development associations and environmental activists.

Forum participants were selected to ensure that the Forum has a wide and diverse representation as possible.

- A majority of the work is accomplished in subcommittees, but all products and decisions are brought back to the Forum for final approval.

- All Forum meetings are open to the public and anyone may participate.

Site Pre-development Community Meetings

- All developers or property owners who participate in the Dallas Brownfields Program and have sites that are located in, or near, residential neighborhoods are required to hold neighborhood meetings before they cleanup their sites or start construction.
- The pre-development meetings are designed to inform the neighborhoods about the environmental contamination cleanup and redevelopment planned on the sites.
- These meetings give the citizens the opportunity to be aware of what impacts planned project might have on their community.

controls 1-97:Panel EJ:7-23 97

CITIZEN ADVISORY FOCUS GROUPS - Community INVOLVEMENT PROCESS

Advisory focus groups serve three important functions in environmental management and economic community revitalization:

identifying the stakeholders' and public's interest in environmental management and economic revitalization in the community; making diverse views known to decision makers; and incorporating local concerns in the decision-making process.

Achieving a clean neighborhood environment and robust community involves the government, the private sector, the people in the community and special interests.

There will be a balance of interests in the membership of any Brownfields advisory focus group. The groups will include:

private citizens public interest groups public officials representatives of organizations with economic interest in redevelopment of sites or businesses.

The size of each focus group will be determined on a case-by-case basis by the complexity of the job to be done and the number of interested people. Time, interest and a pertinent agenda are the essential ingredients for an advisory focus group that expects to function successfully.

Active efforts will be undertaken to ensure that citizens in the area have been informed and suggestions for special invitations to potential advisory focus group members are received from the impacted parties. Activities undertaken by the City to ensure active citizen participation will include announcements to the news media, written notices to interested organizations, public appearances and direct contacts.

The responsibility of the advisory focus groups is to "advise". The primary function of the focus groups is to provide elected and appointed City officials with information and suggestions for revitalization locations. The advisory focus groups must understand their specific neighborhood issues and concerns. The groups should provide practical, well thought-out recommendations. If needed, each focus group should have City provided technical expertise available at the meetings. Each focus group should have an understanding of local conditions in their specific community. It is important to remember the advisory focus groups represent the public. Advisory focus groups must understand and accept their role - **they are advisors only and do not have decision-making authority**. The purpose and goals of the Brownfields Initiative will be explained at each public meeting.

Organization of Advisory Focus Groups

Meetings will be scheduled as needed and the City will have an agenda for each meeting. A schedule of meetings will be established across the City's political boundaries. Technical assistance may be provided if the City believes that a focus group might desire expert advice from someone other than the City staff. Recommendations made by the advisory focus groups will be presented to the City decision-makers. Hardcopy survey forms may be passed out to focus group participants at the meetings in order to provide written responses and suggestions to the City. Preparation of various memoranda and short reports presenting the views and recommendations of the groups will be visible to all parties involved through meetings, postings, press releases and other efforts.

City responsibilities

The City will:

Ensure adequate advance meeting notices are given to the community and other interested parties. Identify public interest groups, economic interests and public officials who are interested in or affected by each specific neighborhood's Brownfields Initiative. Convene advisory focus groups that are representative of the impacted communities. Explain to all meeting participants the function and responsibility of the advisory focus groups. Use "Robert's Rules of Order" as the bylaws for all meetings. Receive neighborhood/community suggestions as to the meetings dates of the advisory focus groups. Attempt to ensure that any community representatives live in the area(s) impacted. Provide information, technical skills, and staff support to each focus group meeting. Establish procedures on issues such as when and where written materials will be made available for advisory focus group participants, how long will participants have to review materials and how comments will be received by the City. Direct attention to ensure the advisory focus groups are dealing with the appropriate issues. Select from each current and future issue, its agenda of work for each separate meeting. This should be done with a clear understanding from the City as to how the advisory focus groups will be most helpful.

Consider carefully the advisory focus groups recommendations and ideas. Transmit the advisory focus group's recommendations to the decision-making officials. Monitor the recommendations of advisory focus groups to ensure the recommendations are being given adequate considerations and follow up. Plan for, if needed, subsequent meetings in selected communities so decisions can be communicated to the public.

Advisory Focus Group Responsibilities

The Advisory focus groups will:

Be knowledgeable of the specific needs and values of their respective communities.

Observe "Robert's Rules of Order" in all meetings.

Serve as informational links between the community and the City.

Provide the City officials with well-thought out recommendations.

Communicate ideas, views, concerns, desires, etc. from his/her neighborhood and/or businesses to the City staff.

Encourage constructive communication and understanding among all parties. This give and take will help to develop:

a mutual respect for various viewpoints;

* a willingness to take considerations into account;

* the abilities to arrive at recommendations that best serve the public interest while protecting the environment.

Accept the responsibility of representing as clearly and accurately as possible his or her ideas. Listen carefully to the views of others.

Citizen Focus Groups Meeting Protocol

When the Focus Group meetings are scheduled, a simple protocol will be followed. The City will:

Use local community contacts to help determine best place to hold meetings, ex. local schools or community centers, YMCA, etc. Have City BF outreach person generate interest before meetings start by visiting local neighborhood and association meetings, Chambers of Commerce meetings, PTA Associations, etc. Use neighborhood networks to get word out about meetings. Pass out flyers, by hand, in impacted neighborhoods, post announcements in local businesses. Have 12/13 local community Group meetings. Use appropriate City protocol when planning meetings:

all meetings are opened to public;

written notice of the date, hour, place and subject of all meetings shall be given;

minutes shall be taken at all meetings; and

a meeting notice shall be posted in City Hall in a readily accessible place to the public at all times for at least 72 hours before the meeting.

Use non-City employed facilitator. Keep sign-in list of attendees (include phone numbers). Have local Council members attend meetings. Explain what the BF Initiative is all about, including BF Forum role. Have, if possible, several Forum reps available to answer community questions. Ask meeting participants to think about local BFs, and pass out a prestamped BF survey - survey

contents name of company, industry, etc. if known address of site and immediate cross streets type of business name, address & phone number of respondent

Ask for return mailings of survey by 12:00 P.M. one week beyond meeting date.

After Meetings

Compile list of suggested neighborhood BFs and after considering economic viability, add site(s) to inventory. Take suggestions to Forum for feedback and possible inclusion. Reconvene community groups for follow up meetings once final inventory decisions are made.

Follow up Meetings

Before follow up meetings start, have BF outreach person generate interest by visiting local neighborhood and business association meetings, PTA meeting, etc. Contact all participants at first neighborhood meetings. Use neighborhood networks to get word out about meetings. Pass out flyers, by hand, in impacted neighborhoods, post announcements in local businesses. Use appropriate City protocol when planning meetings; a. all meetings are opened to public; b. written notice of the date, hour, place and subject of all meetings shall be given; c. minutes shall be taken at all meetings; and d. a meeting notice shall be posted in City Hall in a readily accessible place to the public at all times for at least 72 hours before the meeting.

Inner-City News

Dallas' economic development department will begin series of neighborhood meetings

The City of Dallas Economic Development Department will begin a series of Citizen Advisory Focus Group meetings in five neighborhoods in south, east and west Dallas in January 1997 to inform citizens about several of the environmental programs in place within the City of Dallas and to collect input regarding several environmental topics.

The Citizen Advisory Focus Group meetings are included as part of the City of Dallas's Environmental Justice grant from the United States Environmental Protection Agency (EPA). The goal of the meetings is to open lines of communication between the City and the community regarding environmental issues and develop methods to maintain communication among City departments and the community.

The Economic Development Department staff is currently establishing lines of communication with community leaders in each of the five target neighborhoods to organize preliminary planning meetings. These preliminary planning meetings will enable City staff to identify the needs and interest of each neighborhood for the subsequent Citizen Advisory Focus Group meetings. These preliminary planning meetings will take place between December 1996 and Feb. 1997. The Citizen Advisory Focus Group meetings will tentatively take place from Feb. through April 1997.

A number of environmental programs have been identified and will be presented to the community leaders, including the City of Dallas Brownfields Program, Healthy Communities, Recycling, Environmental Health, Water Quality and Household Hazardous Waste Collection. The community leaders will also assist in the development of a survey which will be distributed at the Citizen Advisory Focus Group meetings. The survey will be used to gather citizen input and concerns regarding environmental programs and services.

A series of five follow-up Citizen Advisory Focus Group meetings will be conducted in the same neighborhoods from June through September. These meetings will allow the City staff to report back to the citizens about information obtained from the initial round of meetings.

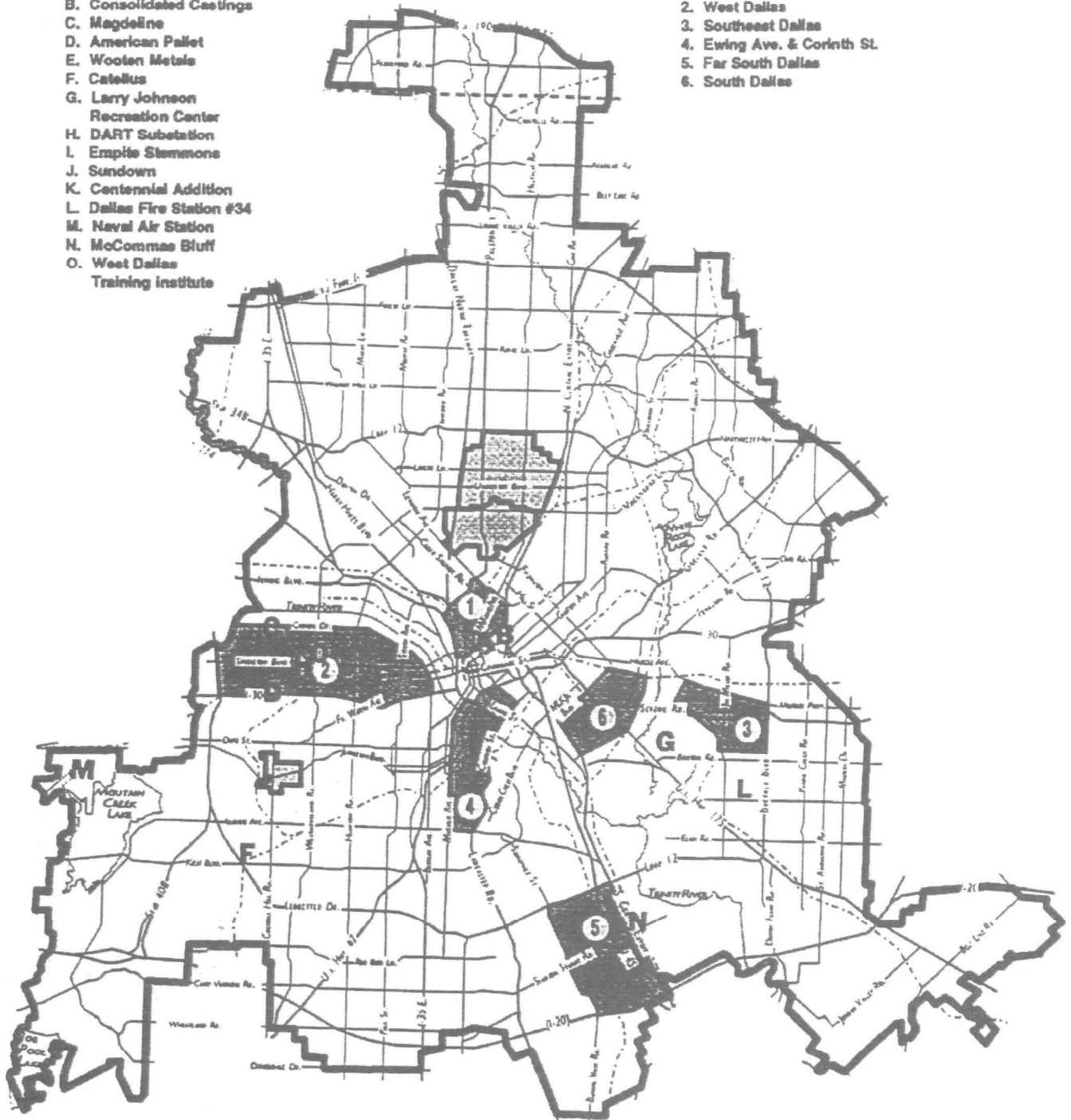
Citizens Advisory Focus Group Neighborhoods and Brownfields Sites

BROWNFIELDS

- A. Jefferson North End
- B. Consolidated Castings
- C. Magdeline
- D. American Pallet
- E. Woolen Metals
- F. Catellus
- G. Larry Johnson
Recreation Center
- H. DART Substation
- I. Empire Stemmons
- J. Sundown
- K. Centennial Addition
- L. Dallas Fire Station #34
- M. Naval Air Station
- N. McCommas Bluff
- O. West Dallas
Training Institute

FOCUS GROUP NEIGHBORHOODS

- 1. Little Mexico
- 2. West Dallas
- 3. Southeast Dallas
- 4. Ewing Ave. & Corinth St.
- 5. Far South Dallas
- 6. South Dallas





BROWNFIELD COMMUNITY ACTION PROJECT

SIXTEENTH STREET COMMUNITY HEALTH CENTER

1032 S. Cesar E. Chavez Drive
Milwaukee, WI 53204

Ph: 414-672-1315 Ext. 372 Fax: 414-672-9190

Contact: Ellyn McKenzie, Environmental Projects Coordinator

*Prepared for Distribution by the U.S. Environmental Protection Agency
at the
Brownfields '97 Conference - Kansas City, Missouri September 3-5, 1997*

Brownfield Oversight Community Action Project

Sixteenth Street Community Health Center's Involvement in Brownfield Redevelopment

Since 1969, the Sixteenth Street Community Health Center (SSCHC), a community based human service agency, has provided quality, cost-effective health care to clients who have no other access to services due to the difficult economic, cultural and linguistic barriers they face. SSCHC focuses on education, prevention and early intervention and strives to provide people with health education, medical care and other services on an ongoing basis to help them avoid more severe, chronic health problems. In addition to medical services, the SSCHC building provides space for other organizations to provide services such as Milwaukee County Social Services, Legal Aid, Latino Health Organization and the federal nutrition program for Women, Infants and Children (WIC). The SSCHC conference room is also available to groups within the community for special events and meetings. However, the SSCHC is not simply a building where people come to receive services, but is an anchor and participant in community affairs. In the name, *Sixteenth Street Community Health Center*, the emphasis is on "Community Health" as a primary goal/objective more so than on "Health Center" as a location for services.

Through this emphasis on the health of the community as a whole, the SSCHC Department of Environmental Health has become the coordination point for a Brownfield Oversight Community Action Project. The Brownfield project is built on the foundation of a comprehensive environmental justice initiative undertaken in 1995 which catalogued environmental hazards in the neighborhood served by the clinic that could pose a health threat to children. Two Brownfield sites were identified -- Try Chem and 1906 S. 3rd Street -- both had boarded up buildings and were covered with gang symbols and graffiti. The Try Chem property had been the object of an EPA Emergency Response Action in the late 1980's but remained vacant and tax delinquent. The 1906 S. 3rd Street site had been acquired by the City of Milwaukee through tax foreclosure, but extensive contamination was feared and prevented the City taking steps to redevelop the property.

Advocate/Facilitator - What We Learned

By assuming the role of advocate and facilitator for Brownfield redevelopment, the SSCHC, City and Wisconsin Department of Natural Resources (WDNR) have learned about the benefits that can be gained from community based involvement. Additionally, one of the project sites, the 1906 S. 3rd Street property, has been successfully redeveloped, allowing a local manufacturing firm to expand operations. The Try-Chem site continues as a Brownfield, although there is significant local interest in continuing to improve the property. Following is a brief assessment of the benefits of non-profit involvement in Brownfield redevelopment and a more specific description of the properties and the SSCHC role in the process.

1) There Are Public Health Concerns. There are thousands of properties in the State of Wisconsin, (hundreds in Milwaukee) which remain vacant because of contamination from past industrial use. Boarded up, abandoned buildings attract children and gang activity. Vacant sites are convenient locations for illegal dumping. In the case of the 3rd Street property in our project, over 1000 tons of PCB contaminated soil was removed from the site and friable asbestos and flammable materials removed from the building. Despite fencing and warning signs, frequent trespassing occurred on the site. An important benefit of increased Brownfield redevelopment will be decreased hazardous exposure for children who play on these sites.

2) Economic Development/Job Creation Brownfield remediation can be an important part of creating jobs in urban, central city areas, where unemployment is high. The return of family supporting jobs to this disadvantaged neighborhood would undoubtedly result in health benefits for community residents. Plus, returning vacant, underutilized sites to productive use, supports the municipality and the overall health of the community.

3) Need to Provide Community Residents with Information Particularly in the case of severely contaminated sites where emergency clean-up work is done, it is important to provide accurate information to neighborhood residents about any associated health risks or exposure concerns -- associated with the site, or clean up activities. Local governments, elected officials or municipal health departments can perform this role. However, government ability to respond quickly to changing developments and capacity to provide information that is easy to understand in a language other than English may be limited. A credible community based agency has a number of advantages in this regard, and can assign priority to this type of outreach activity that government offices may not be able to do.

4) Community Involvement Necessary for Neighborhood Friendly Development Providing information about the extent of contamination, explaining the process for cleaning up the site and discussing potential development options with neighbors or community residents reaps many rewards. Neighbors are likely to be more supportive of development and can help guide the process if they are involved in the process from the beginning. Again, in the case of the 3rd Street property, neighborhood residents surprised City and Department of Natural Resources personnel by indicating their strong opposition to the property becoming a park or greenspace. This urban neighborhood was wary of open unattended spaces and strongly promoted industrial or commercial activity on the site.

5) Community Involvement Facilitates Marketing of Sites Even if properties located in urban areas are cleaned up and made ready for development, parcels may be small and unsuitable for large scale major developments. Expansion of facilities already operating in the neighborhood is an important market for new development -- and facilities already operating in the neighborhood will of course be an easier sell than

attracting new development in from areas outside the neighborhood. In central city urban areas, existing businesses, community based agencies and service providers have an already established base and are logical entities to expand operations when sites become available.

The Project

In February of 1996, the SSCHC became a partner with the City of Milwaukee in a proposal to the WDNR's Brownfield Environmental Assistance Program (BEAP). Through the BEAP, WDNR was granted authorization from the USEPA to re-program Superfund dollars to provide technical assistance to municipalities to conduct Phase I and II Environmental Assessments on Brownfield properties. Eleven municipalities participated in the 1996 BEAP project. The two sites selected in Milwaukee were picked in part, because of the SSCHC partnership with the City in the project.

Site Descriptions and Status

1906 S. 3rd Street

The 1906 S. 3rd Street is a former tannery warehouse, that has been used as a foundry, tannery and for waste and metal reclamation activities as well as for the storage of 55 gallon drums of unknown substances. The 1.3 acre parcel is located in a once heavy manufacturing area of Milwaukee. The site posed a health and safety threat to trespassers and the site had become a favorite site for illegal disposal of other wastes and debris. Soil at the site was contaminated from past uses and groundwater contamination was suspected. The property is adjacent to marina development on the Kinnickinnic River. Located in Census Tract 166, the population of neighborhood residents is 53% Hispanic, 40% White, 3% Native American and 3% African American. 47% of the population live below the poverty level. In August 1996, the US EPA conducted an emergency removal of contaminated materials at the site. The cost was approximately \$400,000 with over 100 drums crushed and disposed of, 41 cubic yards of lead contaminated ash, 6 drums of flammable liquids, 2 drums of organic solids, 8 bags of friable asbestos, 54 trucks of contaminated soil – roughly 1,000 tons removed from the site. 1,000 tons of clean rock and gravel have been brought in for backfilling.

In large part because an existing structure formed a barrier over much of the site, the property has been able to be redeveloped. A local manufacturing firm is in the process of acquiring the property, the building has been extensively remodeled and by the end of the summer approximately 20 employees will be working at the site. It should be noted that the owner of this company was willing to proceed with the purchase of the property, under terms approved by the WDNR, even though contamination remains on the site. This owner also was able to finance this expansion on his own. These two barriers to redevelopment might have stymied other prospective purchasers.

Try Chem

The former Try Chem site was used for paint stripping, electroplating and as a chemical manufacturing and storage facility for over 100 years. Disposal of hazardous materials into the sewer system and into an open pit inside the building resulted in the owner of the property being charged, convicted and jailed for improper disposal of hazardous substances. Within a block of a residential neighborhood the site was an eyesore, an attractive nuisance to young children, a magnet for gang activity and a potential health hazard.

Demographic/socio-economic data for Census Tract 157 where Try Chem is located indicates approximately 4,000 residents, including more than 500 children under age five and 1500 children under the age of 18. The population is 75% non-white (63% Hispanic, 9% Asian, 24% White and 3% African American). 46% of the population is below the poverty level. In 1987 and 1988 US EPA removed over 50 barrels containing various hazardous substances and pumped out several plating tanks containing unidentified liquids and sludge. The Try-Chem building had been fenced off and boarded up several times, but vandals regularly removed the fencing and frequently trespassed on the site. The property has a high development potential because of its location near major highways, other industries and an under-employed population.

Through the Phase I and II process, as groundwater monitoring wells were installed and soil samples were collected, it became necessary to raze the building on the site. This demolition, in and of itself, has been a positive step forward from a neighborhood perspective. There no longer is a boarded up abandoned building as a place for children and gangs to explore. Staff from the SSCHC Department of Environmental Health continue to work with the City to attract additional resources to continue work at Try Chem. A key impediment to re-development of this property are tax liens filed against the property including a lien for the previous Superfund action.

The Role SSCHC Played

The involvement of SSCHC in this project has added several important dimensions to a complex process which would be lacking without a link to a community based agency.

1) The SSCHC served and continues to serve as a point of contact for the community to provide information and answer questions about the contamination and removal actions on the properties. The SSCHC responded to numerous individual inquiries from community residents, assisted the City Health Department with door to door distribution of materials and organized and hosted two public meetings to discuss the project and provide visibility for the remedial work. SSCHC provided translation services for these meetings, prepared background materials and provided assistance in translating question and answer sheets and signs for posting at the properties.

2) The SSCHC serves as a point of contact for the various state, local and federal governmental agencies involved in work on these properties. The coordination of testing activities done by DNR, Division of Health and EPA was greatly enhanced by having a central location for the transfer of information. Regular meetings with everyone at the table -- government professionals with community residents -- have provided a convenient way to jointly produce timelines which everyone can use and understand. Further, the SSCHC had the ability to phone and follow-up, or continually tweak the process to assure that communication occurred between agencies and individuals working on the property.

3) The SSCHC demonstrated the capacity to recruit and involve additional partners as well as advocate for additional resources for the project. Even though the BEAP properties were the object of a new pilot program, the WDNR's work was spread equally amongst the 12 pilot sites throughout the State. The City had numerous other priorities to address. SSCHC was able to keep the focus on these properties and greatly facilitated the process by doing so.

(3B) More Than Just the Money: The Emerging Role of Foundations

Friday, September 5, 1997

8:00 a.m. - 10:00 a.m.

Description: Foundations are beginning to increase their emphasis on communities to include cleanup and redevelopment of brownfields. Panelists will explore the cutting-edge efforts of foundations in the brownfields arena.

Location: Room 2210A

Speakers and Affiliation:

Mr. Andrew McElwaine (Moderator)

Heinz Endowments

Mr. George Brewster

California Center for Land Recycling

Mr. Toby Clark

Clean Sites, Inc.

Ms. Nan Stockholm

Self-employed consultant

MR. ANDREW MCELWAINE

Andrew McElwaine is a program officer and Director of Environmental Programs at the Pittsburgh-based Heinz Endowments. The Endowments are one of the nation's largest philanthropic organizations. Their mission is to support progress in community development, the arts, education, health, human services and the environment.

Prior to joining the Endowments' staff, Mr. McElwaine served as a staff member at the President's Commission on Environmental Quality. He was senior environmental counselor at the E. Bruce Harrison Company. He has also served as director of congressional affairs at the Institute of Scrap Recycling Industries, Inc., directing the legislative program of the nation's largest recycling organization.

During most of the 1980's, Mr. McElwaine served as a legislative assistant and subcommittee staff director for the late U.S. Senator John Heinz (R-PA). He assisted the Senator on environmental issues, and served as a staff member of Project 88, the Senator's landmark environmental policy analyses which proposed to integrate economic incentives into environmental policy-making.

Mr. McElwaine is a graduate of Duke University with a degree in political science and earned his master's degree at George Mason University in Fairfax, Virginia. He is pursuing a doctoral degree in environmental policy and history at Carnegie Mellon University. He serves on the Boards of the Great Lakes Protection Fund, the Pennsylvania Organization of Watersheds and Rivers, the Consultative Group on Biological Diversity, the Dollar Energy Fund, the Pennsylvania Wildlife Federation, and the Friends of the National Parks at Gettysburg. He is also a member of numerous other civic, environmental, and historic organizations. He is a resident of Allegheny County, Pennsylvania, is married and has two children.

MR. GEORGE BREWSTER

George Brewster is a graduate of Columbia Law School and Bard College. In a twenty-three year career as a real estate investor and developer, he has been involved in projects as diverse as a 500-acre master-planned community in North Carolina, a mixed-use waterfront infill development in the Bay Area, a 4,300-unit multi-family nationwide investment portfolio, the development of a 580,000 square-foot headquarters complex for VISA International, programming of corporate meeting facilities for Pacific Gas & Electric, and the evaluation, acquisition and asset management of the \$1.2 billion Bell Savings real estate portfolio.

Mr. Brewster was co-founder of BayGroup Property Advisory Services and has served as vice president and director of real estate of Calmark Asset Management, and vice president of Bankers Mortgage Corporation, as well as general manager of its development subsidiaries. He is author of *The Ecology of Development* (Urban Land Institute, 1996) and numerous articles on alternative development models and the integration of the built and natural environments. Mr. Brewster is a member of the Environmental Forum and Environmental Council of the Urban Land Institute and has been executive director of the California Center for Land Recycling since its inception in 1996.

The California Center for Land Recycling (CCLR) was created as a partnership between the Trust for Public Land and The James Irvine Foundation. Its mission is to encourage and facilitate the reuse and recycling of land and building resources in already-urbanized areas.

MR. TOBY CLARK

[Biography was not available at time of printing. Please refer to conference addendum.]

MS. NAN STOCKHOLM

[Biography was not available at time of printing. Please refer to conference addendum.]

**DOCUMENTS THAT SUPPORT
PANEL 3B: MORE THAN JUST THE MONEY: THE EMERGING ROLE OF
FOUNDATIONS**



CALIFORNIA
CENTER FOR
LAND
RECYCLING

*Redeveloping Land for
Sustainable Communities*

UPDATE ON THE CALIFORNIA CENTER FOR LAND RECYCLING JUNE 1997

Staffing

The CCLR staff has grown to seven with the addition of several new members. **Clay Carter** has come aboard as a Project Advisor for the Project Learning Program. **Sam Obregon** is the Administration Manager, and is responsible for all accounting and administrative functions. **Romany Hall** is the Project Associate currently supporting the Project Learning Program. **Isaac Shikuma** is the first CCLR Project Intern. EPA liaison, **Bret Moxley**, will be staying on for the next two years, as Redevelopment and Remediation Advisor for the Project Learning Program. Finally, **Edith Pepper**, formerly of the Northeast Midwest Institute, joins CCLR for the summer to develop a paper on the status of Brownfields in California.

Project Learning Program

In February, the Project Learning Program sent its Request for Proposals (RFP) to approximately 3,000 community development corporations, private developers, counties, cities and redevelopment agencies, and community organizations throughout California. The CCLR objectives specified in the RFP were to facilitate specific site redevelopment, engage in a collaborative learning process, encourage policy reform, and identify financing strategies. CCLR will seek to add value to each project and provide appropriate assistance to the project sponsor in bringing the projects closer to fruition. CCLR will document its work and the lessons learned with case studies, and distill tools for use in brownfield redevelopment within California and beyond. CCLR received 27 proposals from a wide variety of organizations representing a great diversity of project types from locations throughout California. Two initial projects have been selected and three to five more will be chosen within the next month.

Information and Outreach Program

The first iteration of the CCLR website is complete and is up and running at www.tpl.org/tpl/cclr.html. The website contains general information on CCLR, its three programs, other James Irvine Foundation grantees, and The Trust for Public Land. There is an email link to CCLR from the site and a section that highlights our latest news and activities. Additional links to related organizations will be added, and information and resources will be expanded as the site undergoes enhancements. Look for that expanded site later on this year.

CCLR's Executive Director has made several presentations on the mission and programs of CCLR, including an overview of CCLR and redevelopment at the *Infill Development of Contaminated Land* conference sponsored by UC Davis and luncheon presentations at Lambda Alpha and EDAW. CCLR will testify at a Congressional Field Forum on June 21st and will co-sponsor EPA Brownfields '97 in September, and "Getting our Communities Back on their Feet" in November.

Working Group

The CCLR Working Group has been assembled and has held five working sessions. The Group is comprised of members with varied yet complimentary backgrounds, including representatives from the legal, regulatory, community advocacy and housing, land conservation, for-profit development, and environmental consulting communities.



**CALIFORNIA
CENTER FOR
LAND
RECYCLING**

*Redeveloping Land for
Sustainable Communities*

CALIFORNIA CENTER FOR LAND RECYCLING Fact Sheet.

The California Center for Land Recycling (CCLR, or "see-clear") is a new program of the Trust for Public Land, a private nonprofit land conservation organization headquartered in San Francisco. CCLR has been awarded a three year, \$2 million grant by the James Irvine Foundation as part of its Sustainable Communities initiative.

CCLR will work with community based organizations, private developers, lenders and regulators to encourage and facilitate the redevelopment of brownfield sites throughout California. Projects selected for involvement will be those whose reuse is community supported, environmentally responsible and economically feasible.

Brownfield sites are abandoned, idle, or underused land and buildings, most of which are in urban locations, whose use or redevelopment is impeded by real or perceived environmental problems. It has been estimated that there are as many as 500,000 brownfield sites in the U.S., with a current market value of between \$500 and \$750 billion. Abandoned and underused sites result in a loss of tax revenue, jobs, housing and recreational opportunities in the community. Vacant buildings and lots foster crime, inhibit the development of surrounding parcels, and can pose health risks to the community, adding to the decline of urbanized areas. Elimination of contamination and the prevention of new uses which create pollution are vital issues of environmental justice.

Uses for brownfield sites include housing, commercial, mixed-use and industrial projects, as well as the creation of parks and recreational areas and restoration of wildlife habitat and open space. Redevelopment of brownfield sites offers the opportunity to revitalize neighborhoods and cities through the creation of new housing and jobs, increased tax base, and improvement in the quality of life. By making cities safer and more livable, brownfield redevelopment also decreases pressure for expansion of development into rural "greenfield" areas, helping to preserve open space and habitat around our cities. Barriers to brownfield redevelopment include long term liability issues for owners, developers and lenders; uncertain clean-up standards and costs; and a complex and confusing regulatory environment.

The role of CCLR is to facilitate redevelopment of brownfield sites by providing an integrated package of services tailored to the specific needs of the project, including advisory and consulting services in feasibility, planning, remediation, financing, development and project management. Beginning in early 1997, CCLR will select and develop a number of demonstration sites to prove the feasibility of this approach. CCLR will develop and work for the implementation of policies which encourage brownfield redevelopment, and share its knowledge, experience and resources with public and private sector organizations involved in redevelopment, including grantmaking related to specific projects.

Northeast/Midwest Institute Congressional Field Forum

Testimony by George B. Brewster, Executive Director California Center for Land Recycling

June 21, 1997

Introduction

My name is George Brewster and I am a real estate developer and investor, as well as an environmentalist. After having been involved in some \$2 billion of projects ranging from single family houses to high rise office buildings, I concluded that conventional land use and development practices are not only unprofitable, but also socially and environmentally irresponsible. I joined the California Center for Land Recycling as its executive director because I am convinced that a new model for land use and development is both needed and eminently possible.

The California Center for Land Recycling (CCLR, or "see-clear" for short) is a non-profit born in 1996. It was conceived by The Californians and The Land Project, a broad spectrum group of business, public sector, non-profit and funding organizations concerned with land use policy which is underwritten by the James Irvine Foundation. The mission of CCLR is to encourage and facilitate the reuse and recycling of land and buildings in already-urbanized areas of California, as a long term strategy to conserve land resources and create sustainable communities which meet the long term needs of the community, the economy & the environment.

The implementation of this strategy is through neighborhood-driven decision-making, and regional planning policies. Programs include intermediary and advisory services for site-specific projects; development of information resources and networks; and the creation of policy reform proposals which will help level the playing field between brownfield and greenfield development.

Creating the vision and implementing this new approach will require leadership from the public, private and non-profit sectors. Non-profits such as CCLR and other organizations can provide a vital link between the public and private sectors, particularly in light of decreased levels of federal funding and the devolution of planning and regulatory functions from the federal to the state level. In recent years there has been a proliferation of NGO's involved in sustainability, land use and urban revitalization issues, making more resources and capacity available to forge new collaborations and solutions. At the same time,

philanthropic institutions have more resources available to direct at these issues, and a growing interest in investing in them. These trends present an opportunity to refocus attention on regional planning, statewide growth management and regulatory reform.

Framing the Brownfields Issue

The Western United States have a somewhat different brownfield problem than the industrialized Northeast and Midwestern states. Those states are typified by the large concentrations of obsolete industrial facilities that are the legacy of the Industrial Age, a time when the West was just being settled. The situation in the West is more the result of Manifest Destiny, the nineteenth-century belief that the U.S. would inevitably expand to the Pacific Coast, and which gave rise to a view of Western land as a limitless resource, to be conquered and exploited with impunity.

The West has developed and urbanized rapidly since its settlement, and especially following the end of WWII. Today 86% of all Westerners live in urban areas, compared to New York's 80%, and 6 of the 15 fastest growing cities in the nation are located in the thirteen Western states. The pattern of urbanization in the West has been one of boom, sprawl, abandonment: boomtowns become sprawling urban areas, leading to the abandonment of downtown cores as growth moves to the outer fringes of the metropolitan region.

California is in the vanguard of this trend, and Los Angeles has come to become for many the touchstone of what they don't want as their future. The primary characteristics of Los Angeles, as well as the other Western cities which are following its pattern, are the consumption of land at rates far greater than the underlying population growth, and the creation of blighted urban cores characterized by concentrations of poverty, a shortage of work and educational opportunities, and high rates of crime and disease. The sprawl pattern of development, spreading ever outward and leaving hollowed out "donut cities" at the core, reflects the underlying belief that land in the West is limitless, that it can be used up and thrown away. It is not only unsustainable, it is also socially and environmentally irresponsible, leaving in its wake ruptured ... "bonds of community, compassion, culture and place," according to Mark Sagoff of the Institute of Philosophy and Public Policy at the University of Maryland.

Brownfields, in the sense of contaminated and abandoned industrial and commercial sites, are one by-product of the sprawl pattern of growth. But deteriorated and abandoned apartment buildings and shops, and garbage-strewn vacant lots are also by-products of sprawl, its waste product if you will. Perhaps the more inclusive term "urbanfields" better describes these vast land resources in close-in locations, with existing infrastructure and services, that are

today treated as trash but which instead could be recycled and reused. Recycling land and buildings in already-urbanized locations, in a way which produces pedestrian-friendly, mixed-use neighborhoods, can meet the need for quality communities for all income levels, while helping to preserve undeveloped land outside the urban area.

The biggest obstacle to such a new model of development is the institutionalization of sprawl during the post-WWII period. While sprawl is sometimes referred to as unplanned development, it might be more accurate to call it *subsidized development*, because the social, environmental and economic implications of locating new development at increasing distances from the urban core are almost completely ignored in its pricing. The result is to "...stimulate overconsumption of housing in costly-to-serve circumstances, and to subsidize the more costly locations with less costly ones," according to James Frank ("The Costs of Alternative Development Patterns," Urban Land Institute, 1989).

The planning practices, land use and building codes, governmental incentives and financing structures which were created to address the needs of post-war America have ossified into an institutionalized web of incentives for sprawl development and pose currently-insurmountable barriers to brownfield development. Although our needs have changed, our policies have remained frozen.

Obstacles to Brownfield Redevelopment

The obstacles confronting brownfield redevelopment illustrate how a fragmented approach to legislation and regulation can exacerbate, rather than resolve, the problem. Those obstacles can be summarized as the four C's: Lack of certainty, lack of clarity, lack of coordination, and lack of cash. Lack of certainty is evidenced in permitting processes, entitlements hassels, and cleanup standards. Lack of clarity runs throughout the regulatory environment, including liability issues and overlapping jurisdictions. Lack of coordination between governmental agencies and programs to encourage brownfield development and discourage greenfield development is endemic. Lack of cash is reflected by the almost total absence of meaningful incentives for private sector investment.

The involvement of the private sector is critical in addressing the challenges of urban revitalization. Healthy economic growth is both a precondition to, and a result of, sustainable communities. Private investment is the engine that can fuel sustainable growth; policies which encourage socially and environmentally responsible investment are as important as public seed capital to leverage private investment. Fortunately, increased public interest and media attention has created a growing awareness among business leaders of environmental

issues, and there are signs of more willingness within the business community to assume responsibility for leadership in social equity issues.

The role of government should be to provide leadership in implementing new policies to encourage urban revitalization, and to provide resources for communities to help themselves, together with incentives for business to act with a long term view, in order to balance economic growth with environmental protection and social equity.

Approaches to overcoming the obstacles must view brownfields in the context of the larger challenges to urban revitalization, and should:

- Be place-based and regional in scope;
- Take a long term view of social, economic and environmental needs;
- Be holistic in concept and integrated in implementation;
- Encourage community-driven decision making and problem solving;
- Facilitate public/private collaborations and encourage civic entrepreneurial creativity;
- Help level the playing field between greenfield and brownfield development; and
- Provide economically feasible alternatives to conventional patterns of growth.

Solutions

What we need to do now is to change our thinking, to recognize and deal with the problems created during the post-war period, and to create new solutions that address today's problems without creating new problems tomorrow. This will require system-wide changes in policy and practice. When policy is understood as a major cause of sprawl, land use reform becomes an appropriate subject for corrective legislative action.

Some directions for such policy reform are:

- Systemic, coordinated reform in policies related to growth, including land use regulations, tax structures and financing mechanisms.
- Implementation of programs which provide incentives for private sector investment and development in already-urbanized areas, and which discourage additional development in greenfield areas.
- Reduction of obstacles such as outmoded zoning and building codes, cumbersome entitlements and permitting procedures, and the regulatory, liability and financial hurdles faced by BF sites, including:
 - CERCLA reform to remove Superfund liability for purchasers, developers and lenders of BF sites, liberalize the VCP program to eliminate re-openers, and provide for regulatory clarity, certainty and coordination;

- Federal models for voluntary state growth management programs based on regional scale, long term planning and which discourage sprawl and encourage inner city investment; which reform local codes and zoning to encourage compact, pedestrian-friendly and transit-oriented development; and which provide for community-based decision-making processes. Such models must be accompanied by incentives for state adoption;
- ISTEA reauthorization in a form such as the Chafee/Moynihan bill, which would double CMAQ spending and boost enhancements;
- Economic incentives, such as the brownfield tax incentive bill (Senate bill S.235 and House H.R. 505); and
- Banking regulation reform to overcome the practice of "building-monoculture" imposed by underwriting procedures and portfolio policies which have the effect of encouraging sprawl development by not being able to accommodate the greater diversity of project and financing types in the urban environment.

Conclusion

I urge you to keep the larger picture in mind and to work toward comprehensive reforms which will encourage reuse of urbanfields of all types to achieve urban revitalization. It is vital that we create private sector incentives that will be as effective in overcoming urban decay today, as the incentives created in the 1950's were in stimulating sprawl development.

What seems to be needed is a comprehensive Urban Recovery Plan, a Marshall Plan for the American cities of the 21st century. Such a plan would provide a framework and resources at the national, state and local levels to link and integrate land use, economic development, and conservation planning to stimulate economic recovery, resource conservation and community-building. I urge you to think in terms of the whole fabric of our metropolitan areas, and to see brownfields as part of the urbanfields challenge, as an opportunity to change the way we accommodate growth and to create a new model for growth and development, grounded in the principles of stewardship and sustainability which can meet the needs of the 21st century.

(3C) A New Kind of Business: The Cherry Pickers, Packagers, and Deal Makers

Friday, September 5, 1997

10:30 a.m. - 12:30 p.m.

Description: Take a look at the new types of business engendered by the brownfields movement, including major property packagers who clean up and sell large parcels, cherry pickers who stick with the prime easy deals, and innovative venture capitalists.

Location: Room 1203B

Speakers and Affiliation:

The Honorable Elliott P. Laws (Moderator)

Mr. Barry Hersh

Mr. Michael J. Murphy

Mr. Lewis Norry

Patton Boggs, L.L.P.

Dames & Moore/Brookhill

Environmental Strategies Corporation

Norry Management Corp.

THE HONORABLE ELLIOTT P. LAWS

Elliott P. Laws, the former Assistant Administrator for Solid Waste and Emergency Response at the U.S. Environmental Protection Agency (EPA), is a partner in both the environmental, health and safety, and the public policy practice groups of Patton Boggs, L.L.P. He specializes in issues relating to economic redevelopment of contaminated properties, brownfields, environmental policy and legislation. In his position at EPA, Mr. Laws was responsible for the national solid and hazardous waste management programs, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) program, better known as Superfund, and the national Brownfields Program, as well as the Agency's underground storage tank and chemical emergency planning and prevention programs. Prior to his appointment to EPA, Mr. Laws was a partner specializing in environmental law and legislation, and municipal representation at Patton, Boggs & Blow, focusing primarily on CERCLA, air, water, and recycling issues.

MR. BARRY HERSH

Mr. Hersh joined Dames & Moore/Brookhill at its inception in May 1996, and he manages site acquisitions and redevelopments. This joint venture company, between a major engineering firm and a substantial real estate group, was created to acquire, remediate, and redevelop contaminated properties. The initial focus has been the reuse of industrial and retail facilities throughout the United States. In March 1997, Dames & Moore/Brookhill completed the first portfolio acquisition of 24 environmentally-tainted assets in 12 states for \$72,000,000.

Mr. Hersh holds a Bachelor of Arts in urban and environmental studies from the City University of New York, and a master's degree in urban planning from the Wagner School of New York University. He is a member of the American Institute of Certified Planners, the Urban Land Institute, and NACORE.

MR. MICHAEL J. MURPHY

Mr. Murphy is a co-founder and the chairman and chief executive officer of Environmental Strategies Corporation (ESC), a full-service environmental consulting firm with headquarters in Reston, Virginia. He also founded and serves as chief executive officer of Industrial Recovery Capital Holdings Company, a contaminated property investment, acquisition, remediation and redevelopment firm. He has extensive experience in environmental consulting and senior corporate and senior corporate management related to environmental programs. He has been extensively involved in the development of risk analysis, environmental policy, and technical risk assessment programs. He was formerly appointed to the Expert Advisory Consultation on Environmental Risk Management of the World Health Organization, European Office, Copenhagen. He testified on waste policy issues before the United Kingdom (UK) House of Lords Conference to assist in the debate on establishing UK waste policy.

Mr. Murphy has assisted numerous clients in the development of strategy in dealing with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Superfund liabilities and remedial investigations and feasibility studies. He has also worked in the application of various scientific disciplines and procedures in assessing liabilities associated with the merger or acquisition of commercial properties and facilities. Law firms and investment banking organizations have relied on this approach before the final transfer of assets.

Mr. Murphy was instrumental in developing the procedures used for pollution liability insurance risk assessments for the insurance industry and has lectured widely on these procedures. Mr. Murphy directs the strategic planning effort on diverse environmental issues before governmental agencies for representatives of private industry. Mr. Murphy has served on the boards of directors of private and public companies in the United States.

Mr. Murphy received his Master of Science cum laude in natural sciences from the State University of New York (Roswell Park Memorial Institute Division) and was awarded a National Institutes of Health predoctoral fellowship and an American Cancer Society grant. Mr. Murphy received his Bachelor of Science from the State University College of New York at Buffalo.

MR. LEWIS NORRY

Lewis Norry is president of Norry Management Corp., a third generation family-owned real estate development firm, specializing in the redevelopment of older industrial properties.

Since joining the company in the mid 1980s, Mr. Norry has successfully directed the Norry Company into the redevelopment of brownfields properties—those impacted by environmental issues such as actual or perceived pollution.

The company's most notable brownfields project is Western Select Properties, a 1.6 million square-foot former AT&T manufacturing facility in Indianapolis, Indiana. The Norry Company has redeveloped the property into a multi-tenant industrial and office complex that is more than 90 percent occupied. Tenants include The Indiana Department of Environmental Management, whose offices and laboratories are now in this facility.

As a result of the company's involvement in this specialized area of real estate development, Mr. Norry has become involved in brownfields policy and often speaks for and consults on the economics and marketability of brownfields. He has spoken to such diverse groups as The Great Lakes Coalition, EPA Region 5, the United Nations Environmental Programme and the City of Indianapolis. He also serves on the City of Indianapolis Brownfields Redevelopment Advisory Group.

(3D) Location! Contamination? A Model for Real Estate Decision-Making

Wednesday, September 3, 1997

3:45 p.m. - 5:15 p.m.

Description: Let's make a deal! This highly interactive session will demystify the cleanup and redevelopment decision-making process for office and industrial property and provide a model that can be applied to most private transactions. Three project proposals will be presented to a simulated board of directors — that's you, the audience! The panelists, an attorney, an engineer and a real estate professional, will present overviews, then open the discussion for the board, who will vote to select the prime site. Afterwards, check in with bankers on the panel for more financing ideas.

Location: Room 1202A-B

Speakers and Affiliation:

Mr. Ronnie E. Duncan (Moderator)

Mr. Gregory R. Hansen

Mr. Douglas Skowron

Sevell & Duncan Realty Services, Inc.

Liberty Property Trust

The Galbreath Company

MR. RONNIE E. DUNCAN

Mr. Duncan is a principal and co-founder of Sevell & Duncan Realty Services, Inc., a Boca Raton, Florida-based regional commercial real estate firm. He today is active in the several regional offices of the firm, especially those located in Fort Meyers and Port St. Lucie, Florida and Atlanta, Georgia.

Mr. Duncan was formerly director of Florida Development for the Office/Industrial Properties Division of the Edward J. DeBartolo Corporation. Mr. Duncan was responsible for all facets of the division including land acquisition, design planning, development and project management, architectural review, construction administration and complete project marketing and property management of major commercial properties.

Currently, Mr. Duncan is a national director and vice president of public affairs, a national director for the National Association of Industrial and Office Properties (NAIOP), and vice president of public affairs for the State of Florida Chapter of NAIOP. He also serves as a member of the NAIOP National Board of Directors and represents all national members as a part of the Executive Committee.

Mr. Duncan is a member of the Business Advisory Board for Florida Atlantic University and a former member of the professional teaching faculty of NOVA University, based in Davie, Florida. Mr. Duncan is on the advisory board of and committed to the enhancement Daily Bread Food Bank of South Florida. He also serves as a member of the Community Development Board, Morton Plant Mease Hospital and Health Care System.

MR. GREGORY R. HANSEN

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. DOUGLAS J. SKOWRON

Mr. Skowron assembled a development team and proposal responding to a national request for proposal (RFP) and was selected to develop a 100-acre brownfields site on Pittsburgh's south side. He directed an urban design firm and redevelopment authority in developing a master plan for mixed-use urban campus including office and research facilities, flexspace, retail/entertainment, and residential apartments totaling approximately 2 million square feet. He assisted in assembling a tax-increment financing package to develop structured parking and infrastructure, and he currently leads a marketing effort to recruit office/light industrial tenants and develop suitable buildings for their use. Mr. Skowron also serves as consultant on other brownfields projects.

**DOCUMENTS THAT SUPPORT
PANEL 3D: LOCATION! CONTAMINATION? A MODEL FOR REAL ESTATE
DECISION-MAKING**



**Creating a Future for Environmentally
Distressed Properties**

Analysis of Real Estate Potential

September 3-5, 1997

The Galbreath Company

Location Variables for a Site

- ✓ Visibility**
- ✓ Labor Force**
- ✓ Adjacent Uses**
- ✓ Transportation Access**
- ✓ Population Density**
- ✓ Traffic Count**
- ✓ Quality & Character of Surrounding Neighborhoods**



Location Variables, cont...

- ✓ **Completion of Time 18-24 Months**
- ✓ **Labor Market - Availability of Skills**
- ✓ **Costs**



Site Issues

- ✓ **Highway Access**
- ✓ **Full Utility**
- ✓ **Topography/Soil Conditions**
- ✓ **Relatively Free of Environmental Issues**
- ✓ **Compatible Surrounding Land Use**
- ✓ **Proper Zoning**
- ✓ **Controlled Ownership**
- ✓ **Realistic Development Plans**



✓ Industrial/Office

- Quick Access to Limited Access Highway**
- Labor Availability**
- Airport Hub**
- Access to Suppliers/Customers**
- Amenities**
 - Shopping**
 - Golf/Recreation**
- Campus Environment**
- Large Footprint - 30,000 SF**



✓ **Retail/Entertainment**

- ▶ **High Traffic Volumes**
- ▶ **Visibility**
- ▶ **Buying Power of Surrounding Neighborhoods**
- ▶ **Access/Egress**

✓ **Residential**

- ▶ **Watch for Clean-up Standards**
- ▶ **Apartment vs. Single Family**
- ▶ **Amenities - Convenience to Shopping**
- ▶ **Existing Neighborhood Fabric**



Economic Development Alliance

✓ Building Alliance

- IDC's, Redevelopment Authorities, CDC's**
- Give Them Stake in Your Success**
- Gain Access to Public Resources**
- Pull Market to Your Site**



Economic Development Alliance, cont..

✓ Public Private Partnership

- Private Seed Money to Leverage Public Infrastructure**
- Community Planning & Participation**
- Development Agreement**
- Rights and Responsibilities**



Sources & Use of Funds

✓ Uses

- Site Preparation**
- Construction**
- Soft Costs**

✓ Sources

- Cost of Capital**
- Loans**
- Grants**



Market Analysis

✓ Supply

- **Existing Supply of Space**
- **Vacancy Rates**
- **By Type - Flex, Warehouse, Retail**

✓ Demand

- **Absorption Rates**
- **Specific Tenants**
- **Rent Comparables**
- **Sale Comparables**



Revenue Projections

- ✓ **Rent Projections**
- ✓ **Sales Projections**
- ✓ **Lease-Up**
- ✓ **Build-Out**
- ✓ **Mixed-Use Campus. Whole Greater than the Sum of the Parts.**



(3E) Financing 201: Funding Options for Municipalities and the Private Sector

Wednesday, September 3, 1997

3:45 p.m. - 5:15 p.m.

Description: An advanced offering for more experienced brownfields practitioners, this session is not for the novice. Tax increment financing (TIF), general obligation and revenue bonds, and Small Business Administration financing are among the topics to be discussed. Bring your financing questions!

Location: Room 1203C

Speakers and Affiliation:

Mr. Randy A. Muller (Moderator)

Bank of America

Mr. David R. Campbell

Bank of America

Mr. Michael H. Elam

Rudnick & Wolfe

Ms. Karen H. Lennon

SomerCor 504, Inc.

MR. RANDY A. MULLER

Mr. Muller, as vice president and manager of the Environmental Services Group in Chicago, is responsible for the ongoing environmental risk management for all commercial lending and trust activities originating in Chicago. The group reviews all levels of environmental information for fiduciary, prelending and preforeclosure situations in regards to technical, legal, and regulatory concerns. The portfolio is made up of typically industrial assets located throughout this country and overseas. Most recently he has spent considerable time working in concert with various public and private entities to pass legislation and to develop technical and financial methodologies to expedite redevelopment of potentially contaminated properties (brownfields).

MR. DAVID R. CAMPBELL

Mr. Campbell joined Bank of America's (BoFA) public finance group in 1996, where he concentrates his efforts in expanding the Banks' credit relationships with public entities throughout the Midwest. Prior to this, he served as a community development leader with both BoFA and Comerica Bank. Mr. Campbell also has experience in commercial lending and single and multi-family housing development. He holds both a Master of Arts in public policy and a master's degree in business administration from the University of Chicago. His publications include Communities in Transition, a study of neighborhood redevelopment in Chicago.

MR. MICHAEL H. ELAM

Michael H. Elam is a partner at the law firm of Rudnick & Wolfe, and a chair of Rudnick & Wolfe's Environmental Practice Group. Mr. Elam is a graduate of Macalester College (B.A., 1976) and Indiana University (J.D., 1980), and he studied international and environmental law at Universite Libre de Bruxelles in Belgium. His practice spans all aspects of environmental law, including regulatory counseling and compliance, corporate and real estate transactions, major litigation and international matters.

Mr. Elam's extensive background at the U.S. Environmental Protection Agency (EPA), spanning ten years, provides him with valuable experience and insight into resolving clients' complex environmental issues. Prior to becoming an attorney, Mr. Elam collected and analyzed environmental samples for the State of Indiana and was a physical scientist for the EPA. His legal experience includes work at both EPA's Washington headquarters as well as its Region 5 Chicago office. In Washington, Mr. Elam was the special assistant to the Assistant Administrator for Enforcement, where he worked on special projects for EPA, the Department of Justice, and Congress. At the EPA's Region 5 Office of Regional Counsel, he became senior attorney and represented EPA in some of the nation's most visible and complex environmental litigation. He subsequently became acting deputy regional counsel, responsible for managing over 80 attorneys providing legal services for all environmental matters in the five-state area of Illinois, Indiana, Minnesota, Ohio, and Wisconsin.

Mr. Elam is actively involved with environmental matters in all 10 EPA Regions and internationally. He has significant first-hand experience with investigations and cleanups, as well as risk avoidance, risk allocation and dispute resolution, including negotiations, alternative dispute resolution, and litigation. Mr. Elam is particularly well

known for his work with the use or reuse of "brownfields" (contaminated) property. This includes counseling clients and participating in governmental policy development with respect to all aspects of acquiring, selling, developing, lending and leasing of properties or businesses that have environmental issues associated with them, as well as implementing public private partnerships which require a wide range of diverse talents and disciplines working together. These projects include current and former petroleum refineries, railroads and steel facilities, as well as with "volume" transactions, which encompass multiple properties in numerous states, such as current or former service stations or dry cleaners. Mr. Elam has effectively employed the evolving interest in brownfields to assist in addressing regulatory, Superfund and natural resource damage claims. Mr. Elam regularly speaks to public and private groups across the country and internationally concerning all aspects of environmental law.

MS. KAREN H. LENNON

Karen Lennon is president and founder of SomerCor 504, Inc., a non-profit company certified by the Small Business Administration to originate 504 program loans in the six-county Chicagoland area. In addition to her SomerCor duties, Ms. Lennon serves on the Board of Directors of the Chicago chapter of the National Association of Women Business Owners, as well as the Board of the Economic Development Council of Chicago.

Prior to forming her own company, Ms. Lennon was with a regional bank, purchasing suburban banks for the holding company and creating venture capital and investment management subsidiaries. Other work experience includes consulting with Inland Steel Company and serving as in-house counsel for the Illinois Housing Development Authority.

In addition to her law degree, Ms. Lennon has a Master of Business Administration from the University of Chicago and a master's degree in mathematics from the University of Illinois.

**DOCUMENTS THAT SUPPORT
PANEL 3E: FINANCING 201: FUNDING OPTIONS FOR MUNICIPALITIES AND THE
PRIVATE SECTOR**



Brownfield Financing Mythology

**A Compendium of Three Years of
Frustration**

Randy A. Muller

Bank of America



“I gotta’ Brownfield I want to redevelop.”

Do *you* really “*got*” it?

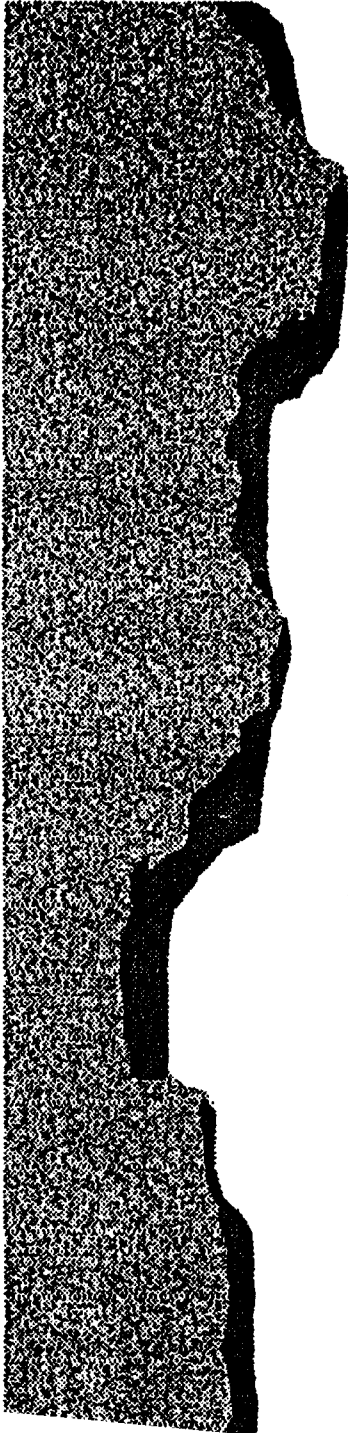
- Control
- Clear Title
- County vs. City Control
- Eminent Domain and Property Assembly
- Reasons for Private Party Reluctance to Sell
(Perpetual Liability vs. Liability Ignorance
vs. Unrealistic Expectations)



“I gotta’ Brownfield I want to redevelop.” (Part II)

Who are You?

- A Developer/Speculator
- A Going Business Concern
- A Municipality



**There Must be a Credit
Worthy Entity for the Bank
to Lend to...A Borrower
Who has the Capacity and
the Character to Repay the
Debt.**



**I “Do” have Control and
Clear Title...Now I need a
Loan.**

Not so Fast... What about Site
Characterization - *Defining the
Risk/Value ?*



Can't I Pay for the Environmental Investigation from the Loan?

Not Likely ...Let's Look at Different
Types of Loans. First, for Developers
and Going Business Concerns...



Real Estate Secured Loans

- The Favorite of Developers and Speculators - Developing with Someone Else's Money (Least Commitment to Sustainable Development)
- Limited Typically to 70% of the *Unimpacted* Property Value (Deal Killer)
- Environmental Due Diligence Must be Done Prior to Loan Commitment
- Must have “Committed” Demand (Although Changing)



Small Business Loans - 7a and 504

- Either Federal Government Guarantees of 70% or Relinquished 50% Equity First Lien Position
- As Little as 10 % Down
- Long Term Amortization at Attractive Rates
- 51% Owner Occupied - No Developers or Speculators, Demand Established
- Environmental Due Diligence Must be Done Prior to Loan Commitment



Asset Based Lending - Equipment, Inventory and/or Receivables

- Typically Insufficient Inventory or Receivables If Property is Under Utilized
- Existing Equipment Often Contaminated or Obsolete
- Typically Requires Significantly Less Environmental Due Diligence (Cash Flows vs. Collateral Value)
- Demand Already Established



**Now Let's Look at
Municipalities...**



General Obligation Bonds

- General Credit Strength of the Municipality is Evaluated Relative to Likelihood of Repayment
- No Environmental Due Diligence *Required by Lender* (Municipal Liability Concerns)



Revenue Bonds

- Legislatively Dedicated Municipal Tax Revenue (i.e., Special Assessment District) Provided to Repay the Bond
- No Environmental Due Diligence *Required by Lender* (Municipal Liability Concerns)



Tips for Approaching Your Lender

- Don't Mention the Word "Brownfield"
- Identify the Type of Loan You Want, Be Specific
- Identify the Potential Risks, How You Determined the Extent of the Risks, and Your Methodology to Mitigate (Remediation) or Transfer the Risk (Indemnities, Escrows, Insurance, etc..)



**Every Redevelopment Risk
(Construction,
Environmental, Socio-
Economic, etc.) Has an
Incremental Cost
Associated with It...**



**Adequately Defining All
the Risks and the
Incremental Costs
Associated with the
Solutions is the First Step
to Getting Financing...**



**Making Sure That the
Revenues Sufficiently
Cover the Costs is the
Other.**

(3F) Are the Fields Always Greener? A Different Approach for Conservation Organizations

Friday, September 5, 1997

10:30 a.m. - 12:30 p.m.

Description: Relatively new players in the brownfields scenario are non-profit environmental and conservation organizations. They can partner with public agencies to acquire, finance, and sometimes remediate brownfields for mixed use, including public parks and greenways. This panel will feature case studies in some of our largest cities where green spaces are bringing both economic and environmental benefits to communities.

Location: Room 1205

Speakers and Affiliation:

Ms. Kathy Blaha (Moderator)

Mr. Michael W. Groman

Mr. Tom Hahn

Ms. Joyce Rowley

Trust for Public Land

Pennsylvania Horticultural Society

CorLands

Scenic Hudson, Inc.

Ms. KATHY A. BLAHA

Kathleen Blaha is Vice President for National Programs for the Trust for Public Land (TPL) and currently directing TPL's Green Cities Initiative, a systematic effort to strengthen urban park and open space programs. In support of TPL staff working in over twenty cities across the country, Ms. Blaha is working to develop new parks, particularly in underserved areas, create better management capacity, and create new funding sources.

Ms. Blaha has worked for fourteen years with TPL on real estate transactions and conservation services, first in the southeast as associate regional manager, then as acting regional manager for the midwest office, relocating to Washington, D.C. in 1992 to work in national programs to develop an urban initiative for TPL.

Before coming to TPL, Ms. Blaha worked first as a land and water resources planner for the regional Council of Governments in Raleigh, North Carolina, and later helped to create the Triangle Land Conservancy, a private land trust in the Raleigh-Durham area of North Carolina.

Ms. Blaha has a Bachelor of Arts in geography from Miami University in Oxford, Ohio (1979) and a master's degree in regional land use planning from the University of North Carolina at Chapel Hill (1981). She currently sits on the board of her local land trust, the Severn River Land Trust in Annapolis, Maryland.

Mr. MICHAEL W. GROMAN

Mr. Groman manages the Community Greening Department of the Pennsylvania Horticultural Society's "Philadelphia Green" program. The program promotes urban horticulture by helping community volunteers to plant street trees, create gardens on vacant lots, and implement various other greening projects throughout the City of Philadelphia. To date, over 2,000 projects have been established. Mr. Groman oversees the implementation and administration of the program's various community greening initiatives. He works closely with the Society's vice president to support overall program planning and development. He also interfaces with city agencies, institutions and other non-profits to promote community gardening as part of the neighborhood revitalization process. Mr. Groman has been with the Society for ten years.

Formerly, Mr. Groman was a project manager with BCM Engineers, Inc., providing environmental planning services to various municipalities in the Philadelphia/South Jersey region. He also worked as a community planner with the Montgomery County Planning Commission. He received a Bachelor of Science in environmental resource management from Pennsylvania State University and a master's degree in regional planning from the University of Pennsylvania.

MR. TOM HAHN

Thomas Hahn is the executive director of CorLands, the non-profit land acquisition affiliate of Openlands Project. Based in Chicago, CorLands undertakes a wide variety of real estate transactions aimed at preserving open space for public use. Since its inception in 1978, CorLands has preserved over 5,000 acres of land with a total value of \$50,000,000. Recent clients of CorLands include the Chicago Park District, the City of Chicago and the Cook County Forest Preserve District. Mr. Hahn will participate in a panel discussion entitled *The Fields Are Always Greener: A Different Approach for Conservation Organizations* and will discuss his recent experiences regarding open space acquisition issues in highly urbanized settings.

MS. JOYCE ROWLEY

Joyce Rowley is a Land Projects Manager at Scenic Hudson, Inc. in Poughkeepsie, New York, where she has worked for the past three years. Ms. Rowley received a Bachelor of Science in geology from the University of Connecticut in 1982 and a master's degree in community planning at the University of Rhode Island in 1991. Prior to joining Scenic Hudson, she worked in municipal planning for eight years, and, at the U.S. Department of Agriculture (USDA) Soil Conservation Service for four years. At Scenic Hudson, she spearheads the Urban Initiative program, working to provide public open space in the built environment.

**DOCUMENTS THAT SUPPORT
PANEL 3F: ARE THE FIELDS ALWAYS GREENER? A DIFFERENT APPROACH
FOR CONSERVATION ORGANIZATIONS**

CDC's AND THEIR ROLE IN OPEN SPACE MANAGEMENT
A CASE STUDY OF
THE NEW KENSINGTON OPEN SPACE MANAGEMENT SYSTEM

The New Kensington neighborhood is located in eastern North Philadelphia. This area, encompassing approximately 100 city blocks, contains over 1100 abandoned vacant lots which foster short dumping, vandalism, and crime, and present an atmosphere of blight and despair. The problems that abandoned vacant land pose to neighborhoods like New Kensington in Philadelphia and to other older industrial cities throughout the country are described in a study produced by the Pennsylvania Horticultural Society in 1995 entitled *Urban Vacant Land, Issues and Recommendations*.

The New Kensington neighborhood is the site of a model program initiated by PHS and the City's Office of Housing and Community Development to establish a ***neighborhood-based open space management system*** to address the growing problem of vacant land. The city will assess its replicability in other neighborhoods throughout the city. The objective of the program is to create an effective system for managing and maintaining every vacant parcel and public open space site in the target area within a 5 year implementation period. It relies on input and support from the local residents, businesses, institutions, and city agencies and identifies a neighborhood-based organization, the New Kensington Community Development Corporation, as the central facilitator of the system. The program is supported by the City

the central facilitator of the system. The program is supported by the City Planning Commission, the City Redevelopment Authority, and two City Council members--one representing the district covering New Kensington and the other at large. It is funded by the City's Office of Housing and Community Development.

The objective of the presentation is to describe the 3 strategic elements of the system:

- initiating community greening projects
- streamlining the city's Sideyard Program
- developing an Open Space Committee

The presentation will also focus on the accomplishments of year 1 of this innovative program and address current activities with particular emphasis on the neighborhood garden center project.

For additional information on this program contact:

Michael W. Groman
The Pennsylvania Horticultural Society
100 N. 20th Street
5th Floor
Philadelphia, PA 19130-1495
Telephone # (215) 988-8800
Fax # (215) 988-8810

Roles for Land Trusts in the Built Environment

The Fields Are Always Greener: A Different Approach for Conservation Organizations

For additional copies, please contact:



**Joyce Rowley, AICP
Land Projects Manager
Scenic Hudson, Inc.
9 Vassar Street
Poughkeepsie, NY 12601**

Phone: 914.473.4440

Fax: 914.473.2648

e-mail: scenichu@mhv.net

Roles for Land Trusts in the Built Environment

September 1997

Introduction

In the Hudson River Valley, decades of neglect and suburbanization have left urban waterfronts in disarray: abandoned and often contaminated industrial sites occupy prime shoreline. Scenic Hudson, a 35-year-old environmental organization based in Poughkeepsie, is developing an urban initiative program that identifies riverfront "brownfields" with strategies for acquisition, remediation, and environmentally-friendly reuse of the most promising sites. In the queue are: transforming an industrial warehouse and lumberyard in the Village of Irvington into a village park, revitalizing an abandoned textile mill in Beacon for a mix of passive recreation and commercial use, and creating a unique "conservation and development template" for the re-use of a former major oil storage facility and coal yard at the Beacon Waterfront. The outline below describes the process of working in urban areas from a land conservation perspective.

Urban Natural Resource Opportunities, Goals and Benefits:

Historically, urban areas have been under served for creation of new parks and other public amenities. These features are considered luxuries for most cities struggling to keep pace with everything from crumbling infrastructure to overcrowded schools, understaffed police forces, housing for the homeless, all at a time when tax revenues are lowest. Land trusts can fill the gap, can offer staff and resources to help create new parkland and new partnerships, and perhaps leverage a return to investing in our cities.

Some of the mutually beneficial opportunities include:

- Protecting special places in the city such as forgotten creeks and wetlands
- Educating the public and bringing in disenfranchised neighborhoods into the public planning process
- Providing public access that otherwise would not be available
- Making visual or physical linkages with other conservation areas, and connecting trails through heritage areas

Urban Land Conservation

Similarities to "normal" land trust work:

- Conservation tools apply to urban areas. For example, if a pedestrian easement can be worked into an existing brownfield or adaptive re-use project, it is much less expensive than fee acquisition but can accomplish many of the same goals.
- Partnerships with other non-profits, municipalities, and state agencies.
- Fund-raising from support base which is often easier in urban areas.
- Acquisition requires due diligence: title, survey, phase I environmental audit

Differences:

- Land costs are much greater per acre, parcels are smaller. Some assembly may be required.
- Closing and associated costs are higher too: attorney fees, title search, survey tend to be higher due to complexity of the history of the site.
- Environmental audit costs to be anywhere up to 10x higher.
- Transaction likely to be more complex -- need indemnifications, detailed environmental clean-up agreements.
- With public partners, the transaction may fall into public domain, eliminating some of the confidentiality of terms.
- Expect to do a lot of explaining. For example: What's a land trust? Why can't we pave to the edge of the creek? What about taxes? While these questions may arise in any area, the level of environmental education needed is much greater. For example, while we can explain why a stream corridor buffer is needed, the response is often, "But we're in an urban area, and we like a 'hard edge' at the riverfront" or "historically, that's how it's always been done" Remember, the attempt to bring a natural edge to an area that has been urbanized for anywhere up to 200 years will take extra effort.

Organizational Questions to Ask:

- Financially, can we do it? Acquisition and due diligence are 2-3 times the cost of non-urban sites.
- Can we partner? City, local, county and state organizations have park staff

and are often looking for this type of project to help revitalize their neighborhoods. Also, urban areas have other, non-land trust partners, who may have volunteers to help: housing non-profits, community resource non-profits, etc. The city government will identify these for you.

More Questions to Ask:

- Does it work? Is there sufficient community support to take care of the property after it's built and to champion it if it is vandalized or misused?
- Does the city administration want it? Are there local or municipal plans that need to be followed? Zoning ordinances, other regulations? Do they have the ability to police and maintain it?
- What are the tax impacts? Is there a positive tax impact? Can we show the community that the clean up of a site, even if as a tax-exempt park, increases the property values in the surrounding neighborhood?
- Can we protect ourselves financially if something goes wrong? This applies more to contaminated sites but any site in an urban area needs to be treated with care.

If the Site is a Brownfield:

- Is there a known technology for remediation? How brown is it? Who will pay for clean-up? Is a principal party still around?
- How clean is clean? What levels or standards apply? Will deed restrictions be needed? Will permanent monitoring occur, and if so, by whom?
- How is the contamination issue handled in the appraisal? Most likely the appraisal will assume a clean site.
- Prior to acquisition, can you secure a covenant not to sue or "no further action" letter by the appropriate government agency?
- Will the owner grant indemnification protecting you against future liability?
- Can you get an environmental clause in the contract of sale structured to allow termination of the contract if the contamination either can't be well-defined, or the cost to remediate it is beyond a set dollar amount? (The last is usually determined by what the owner is willing to spend to clean-up any new found problems.)

Selecting a Site

- Ideally, a resource inventory will identify key historic, ecologic, or scenic parcels which need intervention by a conservation organization. Inventory of known contaminated sites may already exist through state environmental agencies.
- However, the first project may be outside of the inventory such as an offer of donated land through community urban renewal efforts, which becomes available when the community learns that the land trust is a potential partner.

\$\$ Funding \$\$

- Municipal governments may have acquisition funding through Community Development Block Grants (CDBG funds), Industrial Development Agency (IDA) monies, and will have access to alphabet soup of federal housing and urban development grants, most of which give "extra points" for a public access or public amenity component.
- Private sources: foundations and fundraising. Key into foundations with community development element and interest in your geographical area.
- State funding: in New York, Environmental Protection Fund (EPF) grants, administered by Department of State are available for municipal parks and historic preservation projects. They're looking for innovative, partnering grants and are available to land trusts.
- To date, EPA Brownfields program, and the NYS Brownfields component of the Clean Air Clean Water Bond Act are **not** available to non-profit land trusts. However, non-profits can receive funding through the municipality as a contractor/consultant who facilitates the process or performs the inventory of sites, etc.

Scenic Hudson, Inc. is a 35-year-old not-for-profit environmental organization dedicated to protecting the ecosystem, unique landscapes, and historic fabric of the Hudson River Valley.

EPA is granted the right to reproduce this document for purposes of distribution for the EPA Brownfields '97 conference.

(3G) Grant Writing

Thursday, September 4, 1997

10:30 a.m. - 12:30 p.m.

Description: This session will teach you how to write an effective grant application. It is designed for the neophyte and will be particularly helpful to small cities and rural communities and organizations and institutions with little experience in the area.

Location: Room 1203B

Speakers and Affiliation:

Mr. Mosi Kitwana (Moderator)

Mr. John Rosenthal

International City/County Management Association

National Conference of Black Mayors

MR. MOSI KITWANA

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. JOHN ROSENTHAL

[Biography was not available at time of printing. Please refer to conference addendum.]

(3H) Still Banking on the Banking Industry

Thursday, September 4, 1997

8:00 a.m. - 10:00 a.m.

Description: Investment capital is the key to making cities thrive through brownfields cleanup and redevelopment. This panel will help developers, cities, and consultants understand what makes capital providers tick. Hear industry leaders explore the lending preferences of various institutional investors and their impact on the parties who do the deals.

Location: Room 1203A

Speakers and Affiliation:

Mr. Lawrence Jacobson (Moderator)

Mr. Bruce Alexander

Mr. William McKinstry

Mr. James P. O'Brien

Mr. Glen E. Sibley

Mortgage Bankers Association of America

Bank One Colorado

Teachers Insurance and Annuity Association

Baker and McKenzie

Cheslock, Bakker, & Associates, Inc.

MR. LAWRENCE JACOBSON

Lawrence Jacobson is the Director of Commercial Real Estate Finance (CREF) at the Mortgage Bankers Association of America (MBA), Washington, D.C. Mr. Jacobson is a staff representative of the MBA's CREF Environmental Issues Committee. The Environmental Issues Committee is comprised of mortgage bankers, commercial bank lending and underwriting professionals, life insurance company investment officers, environmental consulting professionals, environmental liability insurance providers, real estate attorneys and representatives from information technology companies.

In the July, 1995 issue of *Mortgage Banking* magazine, Mr. Jacobson co-authored the article entitled "EPA's Brownfields Initiatives" with David Slutzky. This article describes the importance of the EPA's policy initiatives aimed at expediting the redevelopment of environmentally impaired properties.

Mr. Jacobson is also responsible for the MBA's largest annual conference, the *Commercial Real Estate Finance/Multifamily Housing Conference*, and staffs the CREF Technology Initiatives Committee. Mr. Jacobson has been at the MBA since 1990. Prior to joining MBA, Mr. Jacobson worked for the Federal Deposit Insurance Corporation (FDIC) in Washington, D.C. as an information technology analyst.

Mr. Jacobson received a Bachelor of Arts from Lafayette College, Easton, Pennsylvania, in 1981.

MR. BRUCE ALEXANDER

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. WILLIAM MCKINSTRY

As chief environmental officer for Teachers Insurance and Annuity Association (TIAA), Mr. McKinstry is responsible for environmental matters as they affect the investment division. TIAA is the world's largest pension fund with over \$185 billion in assets, divided between stocks, bonds, mortgages and real estate. With over \$25 billion invested in over 2,000 properties consisting of commercial mortgages and owned real estate, a strong environmental program is essential.

Mr. McKinstry was instrumental in the development of TIAA's environmental policy in 1987, and has since acted as the environmental coordinator charged with overseeing compliance for all commercial real estate investment.

Mr. McKinstry received his bachelor's degree in architectural engineering - construction management from the Pennsylvania State University and is finalizing a master's degree in environmental engineering at the Stevens Institute of Technology. He resides in New City, New York, with his wife and two daughters.

MR. JAMES P. O'BRIEN

As a partner in the banking, finance and major projects group of the law firm of Baker and McKenzie in Chicago, Mr. O'Brien concentrates his practice on environmental and energy law matters, including permitting, approvals, enforcement and compliance. Mr. O'Brien has represented clients before the U.S. Environmental Protection Agency (EPA) and almost all of the state regulatory agencies. In addition, Mr. O'Brien has prosecuted and defended civil and administrative actions before federal and state tribunals.

Mr. O'Brien also serves as counsel in major project transactions, such as power generation and waste recycling facilities. Both on behalf of project sponsors and lenders, Mr. O'Brien has led the counsel team moving projects through financial closing, construction and operation. As part of that work, Mr. O'Brien has managed complex environmental permitting and transaction issues.

Mr. O'Brien has spoken widely and has written more than twenty articles on environmental and energy topics. Mr. O'Brien has been called upon to testify as an expert witness before the U.S. Congress on proposed environmental legislation.

Mr. O'Brien graduated from the University of Notre Dame with a Bachelor of Science in physics, and received his Juris Doctorate, Order of the Coif, from the University of Wisconsin. Mr. O'Brien is a member of the Federal Trial Bar for the Northern District of Illinois, the American College of Real Estate Lawyers, and is admitted to practice before a number of federal courts and the states of Illinois and Wisconsin.

MR. GLEN E. SIBLEY

Glen Sibley is senior vice president of Cheslock, Bakker & Associates, Inc., a commercial real estate investment banking firm headquartered in Stamford, Connecticut. The firm has proven capabilities in commercial and multifamily mortgage finance and securitization. He is responsible for business development among the firms' major commercial real estate developer, investor, insurance company and investment banking clients. Mr. Sibley's career spans more than twenty years and includes experience in commercial real estate, commercial mortgage finance and environmental issues affecting commercial real estate transactions.

Prior to joining Cheslock, Bakker, Mr. Sibley was senior vice president of ERIC Group, Inc., where he pioneered insurance coverage for environmental risk in commercial real estate mortgage backed securities (CMBS), for REIT's and for other commercial real estate portfolios. Previously, as director of marketing for BCE Development Properties he was responsible for more than \$750 mm in office and retail lease transactions, was a member of the team which negotiated a \$180 mm loan on a single office building, and was the developer of the 766,000 square foot World Trade Center/Denver.

Mr. Sibley served as director of Downtown Denver, Inc., The Greater Denver Corporation, the Denver (Olympic) Games Committee, as vice chairman of Denver's World Trade Center, and as president of the Historic Paramount Foundation. He is an active full member of the Urban Land Institute, serves on its Environmental Committee as well as being its liaison to the National Realty Committee.

Articles authored by Mr. Sibley have appeared in Urban Land, Corporate Real Estate Executive, Real Estate Forum, Building Owner and Property Manager, The Journal of Attorneys and Executives in Commercial Real Estate, and others. He is a frequent speaker on matters of commercial real estate asset securitization and environmental risk in commercial real estate transactions.

Mr. Sibley received an Master of Business Administration from the University of Denver and holds bachelor's degrees in business administration and economics from the University of Puget Sound. He is based in Denver, Colorado.

**DOCUMENTS THAT SUPPORT
PANEL 3H: STILL BANKING ON THE BANKING INDUSTRY**

Lenders Leverage Legal Protection On Contaminated Properties

Lending on cleaned-up brownfield sites can be good business for both financial institutions and borrower/operators.

BY DEIDRA DARSA
REFT STAFF REPORTER

For eight years the abandoned concrete pipe manufacturing facility stood vacant and decaying on a 26-acre site on the west side of Dallas. The soil was contaminated with petroleum hydrocarbons, as was the ground water underneath it. The seven buildings on the site were in need of substantial repair. It was a blight on the community and the minority neighborhood that surrounded it.

For some time Ed Ostrovitz had been eyeing the property, scrutinizing its condition, its environmental damage, and its possibilities. In March 1996, Ostrovitz submitted a contract to purchase the property, contingent upon the seller's removing storage tanks, both above and below ground, and remediating the soil.

With financing from Comerica Bank-Texas and support from state and federal environmental agencies, Ostrovitz was able to bring the property back to life and locate a wood pallet recycling business at the site. The project benefited from the brownfields pro-

gram, an initiative by the U.S. Environmental Protection Agency to remove some 25,000 sites from the federal Superfund program.

"The true beauty of the brownfields program is there are some great locations in the city that people haven't touched for years," Ostrovitz said. The location will generate substantial savings in long-term trucking costs, a necessary part of the company's business. He said the savings are a fair trade-off for the extra bureaucratic hassle of environmental regulations and the cost of renovations.

"I could have taken the same amount of money and gone to a greenfield site and built from scratch and not have any of those problems," he said.

"He's our local American hero," said Beverly Negri, EPA brownfields liaison for the City of Dallas. "Ed has brought in business—made an eyesore look a lot better." Plus, she said, Ostrovitz' business will provide employment to those in the community.

Under a voluntary program in Texas, property owners document their cleanup activities at brownfield sites. After inspection, a certificate is placed on the property deed that re-

leases future owners and lenders of liability.

The involvement of financial institutions is key to the redevelopment of environmentally troubled properties. According to Negri, lenders are being drawn to these deals because of legislation relieving them of liability, voluntary state programs and rules that reduce their risk in these brownfield transactions.

"Since the lender liability legislation came through last September, the concerns about liability have significantly diminished," said Lawrence Jacobson, director of commercial real estate at the Mortgage Bankers Association of America. "The economic viability of the transaction is a greater concern."

In September 1996, reforms to the federal Superfund law were enacted as part of an omnibus appropriations bill. Under the revised law, lenders can conduct pre-loan activities, loan servicing activities, workout, and reorganization and foreclosure activities (provided the lender has not participated in management activities prior to foreclosure) without becoming liable for the cost of cleanup.

Linda Clemons, an environmental coordinator for Comerica, said: "We don't lend on contaminated property unless the property meets certain criteria. The contamination must be defined, delineated, and the cost of remediation established." Even after cleanup, some properties continue to carry the stigma of contamination that turns off future buy-

See Brownfields, Page 21

Brokers Advised To Brace For Changes

Ideas from other industries could help originators prepare for the future.

BY KARA GERLACH
REFT STAFF REPORTER

ATLANTA—Looking into a crystal ball in an attempt to predict the future is nothing new for most mortgage brokers who live everyday with the concern of what the years ahead will bring.

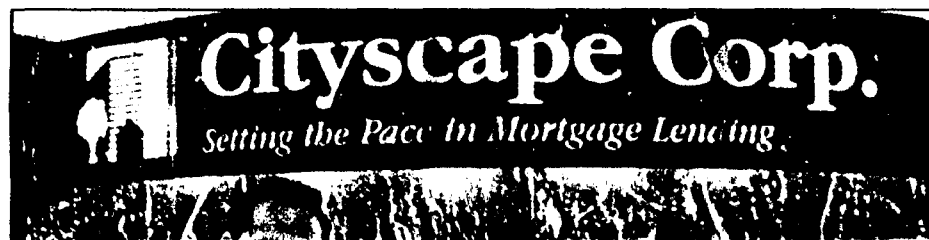
With increased competition, a reliance on technologies that have revolutionized the industry, and the need to work together to find common ground on issues, brokers face many changes in the future.

Industry experts shared their perspectives on the future of the mortgage industry and the importance of keeping up with technology innovations on June 23 at the annual National Association of Mortgage Brokers convention.

"It's a win-win situation to forecast what the future will bring," said Jim Cotton, vice president of marketing at Freddie Mac. "No one ever remembers who forecasted wrong, only who forecasted right. As brokers, you need to have an idea of where the market will be four to five years from now because it's the only way that you will survive. In order to make the right decisions, though, it will be necessary for you to look at the trends occurring right now and the past history of the industry."

Cotton said brokers should not just look at the mortgage business but also look at

Senate Moves Multifamily Sec. 8



Brownfields

Continued from page 3

ers and prevents them from reaching market value.

"On Ed's property we said the market value could fluctuate by 15 percent because of stigma," Clemons said.

The Ostrovitz deal was one of three contaminated properties Comerica financed in 1996. "We've always made loans on contaminated property if we had a good estimate for cleanup cost and a plan to implement it," said Clemons.

To date, there have been no problems on any of the redeveloped properties financed by Comerica. That's partly because the bank, like other lenders that finance brownfield projects, does extensive due diligence that includes interviews with borrowers, attorneys, state EPAs and, in some instances, having a consultant reinspect property and submit a technical report.

PROTECTING COLLATERAL VALUE

"As an environmental coordinator, what I'm responsible for is protecting the bank's collateral value," said Gary Martyr of Bank One, Dallas.

Because the bank could end up owning the property and having to face up to environmental laws, Bank One will only make loans when the property's value is more than the cost of remediation. For example, an inspection of Fort Worth office warehouse being sold for \$800,000 revealed bore holes in the building's slab, suggesting that a previous environmental study had been done. Further investigation found that equipment buried in the slab had leaked solvents into the soil that had never been cleaned.

The new information dropped the building's value to \$400,000, and with the cost of remediating the pollution the loan became undesirable. "You're looking at \$100,000 left on an \$800,000 building," Martyr said. "What if the economy in the area takes a dive and you lose?"

As in Texas, other states have initiated voluntary cleanup programs to encourage brownfield redevelopment.

"We are lucky to be located in Pennsylvania," said Dolores Selby, assistant vice presi-

dent of Mellon Bank in Pittsburgh, referring to the state's brownfields program. Before the program was created, regulatory agencies did not have cleanup standards or a required time frame to review and respond to brownfield redevelopment cases, Selby said. "In many cases [regulators would] change their mind," Selby said. "Under new legislation it really requires agencies to respond in a timely manner."

Mellon has completed approximately a dozen loans under the brownfield program. Selby noted that because the liability protection is applicable only to identified issues, lenders must conduct a comprehensive study of the site.

Once financing is provided, borrowers have to meet certain deadlines. In one case, Selby said, the buyer and the seller had a schedule of issues to meet within 180 days or lose a substantial escrow. Because of that, the bank was able to proceed with the financing by making a business decision, the bottom line in lending money.

VIABLE LOANS

"We look for loans that will be paid back," said Randy Muller, vice president and manager of environmentally services at Bank of America, Chicago. "We don't run from anything in particular."

"Our key is a short term," said Muller of the bank's commercial financing arrange-

ments that run three to seven years on these properties.

"Essentially we take a look at the level of environmental impairment and put it in terms of the cleanup. If there is residual value in the property that will facilitate the credit, we will consider taking the property, either as collateral or as an abundance of caution."

An abandoned dry cleaning facility in southern Illinois is representative of typical brownfield projects for Muller's branch. In this case the perceived cleanup costs were between \$2.5 million and \$6 million.

"We went in and were actually able to work with the state environmental agency and get the property put back on line for \$20,000," Muller said. With help from Illinois Power, the bank used computer modeling to prove that contaminated ground water trapped in a clay pocket would not move off the property. Further drilling in boundary sites did not show contaminated water.

In Portland, OR, a former dairy processing plant was redeveloped by the Los Angeles branch of Bank of America into a low-income housing and retail center.

"Part of the property had underground storage tank problems," said Evan Henry, senior vice president of environmental services. "We were able to work with the responsible parties to gain legal protections and work with the regulatory agencies to make

sure they were clear on the requirements going forward, and ultimately able to redevelop that property. It took extra work, and extra time analyses characterizing all the environmental issues, but that's a very successful project."

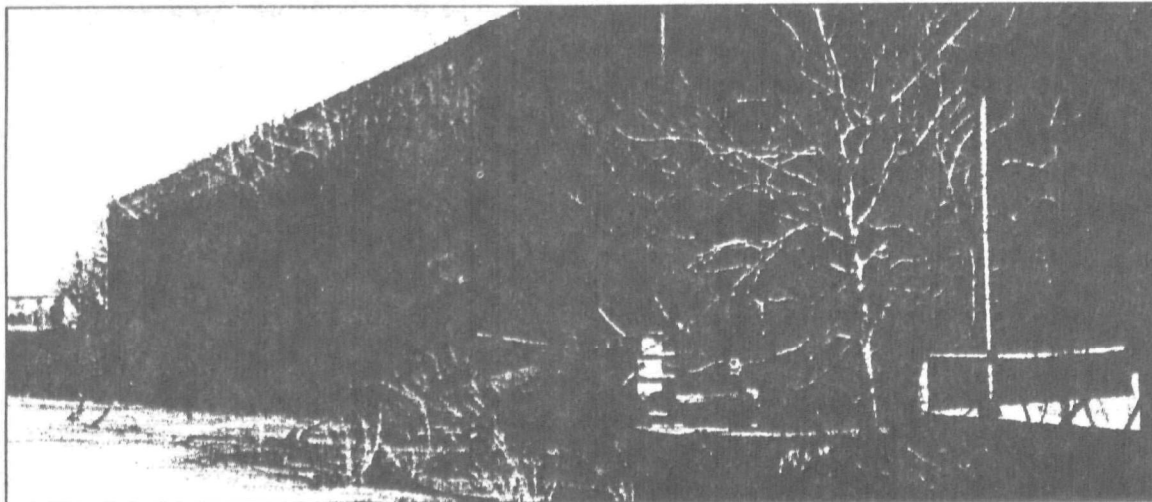
Looking to future environmental redevelopment projects, Henry said, "I believe for the success of brownfields the municipality and redevelopment agencies—those who have the most to gain—must take on the primary responsibility for those things that restrict brownfield redevelopment: gathering information, taking on liability, or putting in the necessary funding to get things moving."

The bottom line is to provide financing for creditworthy borrowers, either real estate secured or unsecured. "In so far as we want to be a competitive and high quality lender," Henry said, "We have to have the skills to market that and include environmental risks."

NY

Continued from page 16

needed to put offices in them, but they are perfect for residences. People are starting to feel very comfortable working and living downtown. This whole area has been immo-



Lender protection clauses are helping to revive brownfield sites.

(31) Malls, Strips, and Shopping Centers: The Art of the Deal

Thursday, September 4, 1997

10:30 a.m. - 12:30 p.m.

Description: Meet the heavy hitters who make it possible for the rest of us to "shop until we drop!" Developers from some of America's finest shopping centers discuss the advantages of using brownfields rather than greener pastures for malls, outlet centers, discounters, and the newer warehouse outlets. Learn how these developments benefit local communities as panelists describe the elements that entice developers to one property rather than another.

Location: Room 1203A

Speakers and Affiliation:

Mr. John E. Ayres (Moderator)

Mr. Peter J. Hopley

Mr. C. Lincoln Jewett

Mr. William H. McCabe

GZA GeoEnvironmental Technologies, Inc.

BJ's Wholesale Club

North American Realty Advisory Services, L.P.

New England Development

MR. JOHN E. AYRES

John Ayres is a certified professional geologist and a Senior Principal with GZA GeoEnvironmental, Inc. (GZA). His experience with GZA spans 30 years, during which he has served in various capacities ranging from staff geologist to president. Mr. Ayres initiated GZA's entry into the environmental and hazardous waste fields in 1978 and managed the technical and business development aspects of the firm's practice in these areas for several years. He has been the principal-in-charge for over one thousand projects involving environmentally impaired properties, including sites in twenty states and five countries. Mr. Ayres is an active member of several professional and trade organizations and is presently chairman of the International Council of Shopping Centers' Toxic Waste and Brownfields Task Force.

MR. PETER J. HOPLEY

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. C. LINCOLN JEWETT

For more than 20 years with North American Realty Advisory Services, L.P., Mr. Jewett has participated in several hundred "brownfield-type" consulting projects for Fortune 1,000 corporations, utilities, and financial institutions throughout the United States and Canada. Mr. Jewett focuses on "motivating, redeploying, and divesting" corporate land and building assets at optimum return, at minimum cleanup cost, and at no new equity investment or risk.

From 1948 to 1964, Mr. Jewett was employed by Arthur D. Little, Inc., Cambridge, MA, an international management consulting, research, and engineering firm.

MR. WILLIAM H. MCCABE

Mr. McCabe is the partner involved in analyzing the land, acquiring the land and obtaining all permits necessary to construct a regional shopping center. He is also responsible for reviewing and determining subsequent environmental issues that develop after the mall has been completed. A number of earlier malls were built on sites that today would be classified as brownfields. Groundwater, soils and air pollution issues have only been focused on in the past ten years so that existing properties require constant reinvestigation. Because of this experience with these types of issues, Mr. McCabe is comfortable in considering developing a brownfields site.

**DOCUMENTS THAT SUPPORT
PANEL 3I: MALLS, STRIPS, AND SHOPPING CENTERS: THE ART OF THE DEAL**

Divesting Corporate Real Estate Having Contamination Constraints.....

"THE TROIKA SOLUTION"



The Reuse-Vision

The keystone element for divesting property having contamination constraints is a documented *reuse-vision*. Involving the synchronous, parallel participation of (1) real estate marketers, (2) environmental engineers, and (3) legal counsel.

We call it "The Troika Solution" -- after the Russian sleigh pulled by 3 horses, *abreast*.

The Use-Based Strategy

The first task to set the stage for marketing the property is to define:

1. For what *new* use, or uses, could the property be marketed, that are:
 - Market supportable;
 - Physically doable;
 - Financially viable;
 - Politically feasible, and
 - Environmentally compatible.
2. For *that* use, or uses, what is the degree, time-span, and cost of clean-up.
3. What *economic development* benefits, new jobs, and tax revenues would be created for the community, from such new use, or uses.

This task defines the reuse-target to aim toward.

Harnessing Governmental & Community Support

When the documented *reuse-vision*, for creating new jobs and tax revenues, is presented to the economic development agencies, elected officials, and community groups, it harnesses *positive support*.

Regulatory agencies then expedite approvals for, say, rezoning, off-site improvements, variances, clean-up schedules, and incentives for new users or investors.

Also, the corporate owner receives *positive press*, rather than being massacred in the media.

It's a win-win situation for all parties.

Here's an Example:

A surplus 100-acre, manufacturing facility had some contamination "going all the way down to China."

We saw its potential as a multi-user industrial/office park. And documented this reuse-vision, on paper.

Clean tracts and buildings were sold or leased first, to users and developers, generating cash to offset remediation costs on the mildly-contaminated tracts. In turn, these tracts were sold, or leased, providing cash for clean-up of the heavy contamination. This "bootstrap" operation achieved \$35 million for our client, offsetting clean-up costs.

Benefits

The Troika Solution:

- Overcomes the contamination hurdle;
- Creates optimum dollar returns;
- Offsets remediation costs;
- Insurance can be obtained that transfers risk and creates financing opportunities for buyers;
- Puts a "positive light" on the corporation;
- Reduces the time-span to a divestment, via sale, lease, joint-venture, donation, or combination; and
- New jobs and tax revenues are produced for the community.

We've completed 850 such assignments. We welcome your inquiries on how The Troika Solution could be applied to your needs -- at no new capital investment or risk.

**North
American** Realty
Advisory
Services

100 Park Avenue
New York, NY 10017
212-883-0500 Fax 212-883-0520

C. Lincoln Jewett
Executive Vice President

(3J) Blazing New Trails: State Financing Initiatives

Thursday, September 4, 1997

8:00 a.m. - 10:00 a.m.

Description: Some of the most creative brownfields financing strategies are coming from the states, and many were in place before the term brownfields was used. This panel captures some of the exciting initiatives being undertaken by state legislatures and how different states are implementing them.

Location: Room 1204A-B

Speakers and Affiliation:

Ms. Mary Gade (Moderator)

Mr. Thomas Boydell

Ms. Darsi Foss

Mr. David A. Munro

State of Illinois, Environmental Protection Agency

Seneca Consulting Group

State of Wisconsin, Department of Natural Resources

State of New York, Department of Law

Ms. MARY GADE

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. THOMAS BOYDELL

[Biography was not available at time of printing. Please refer to conference addendum.]

Ms. DARSI FOSS

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. DAVID A. MUNRO

[Biography was not available at time of printing. Please refer to conference addendum.]

(3K) Banking Over the Rainbow: Turning Brownfields into Gold

Friday, September 5, 1997

10:30 a.m. - 12:30 p.m.

Description: This is an opportunity to hear what goes on behind bankers' closed doors. What makes a bank want to participate in one deal over another? How do banks and their partners really view brownfields properties? Learn about the competing pressures banks must cope with, how they balance their bottom lines with community responsibility, deal with the effects of lender liability reform, and more!

Location: Room 2210B

Speakers and Affiliation:

Mr. Raymond Natter (Moderator)

U.S. Department of the Treasury, Office of the Comptroller
of the Currency

Mr. Clement Dinsmore

Self-employed consultant

Mr. Evan Henry

Bank of America

Mr. Robert O. Zdenek

New Community Corporation

MR. RAYMOND NATTER

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. CLEMENT DINSMORE

Mr. Dinsmore is a self-employed consultant and teacher specializing in the creation of financial programs with environmental goals. This year he is teaching courses at the University of Virginia, School of Architecture, on recycling brownfields sites and financing sustainable development. Mr. Dinsmore has served on the Chicago Brownfields Forum, the Baltimore Brownfields Industrial Redevelopment Council, and the Maryland Voluntary Cleanup Program Task Force. He has written articles on brownfields issues for Federal EPA Region 2, Federal EPA's Environmental Financial Advisory Board, the Urban Land Institute, the Lincoln Institute for Land Policy, the Journal of Urban Technology, and the National Low Income Housing Coalition. He has testified on brownfields legislation before committees of the Ohio and New York legislatures.

MR. EVAN HENRY

Mr. Henry, as Senior Vice President and Manager of the Environmental Services Department of Bank of America, is responsible for assessment of environmental risks associated with the commercial lending practices of the bank. Mr. Henry earned a Bachelor of Science degree in geology from Tufts University, followed by a Master of Science degree in hydrology from the University of New Hampshire. Prior to joining Bank of America, Mr. Henry gained approximately ten years of professional experience with environmental consulting firms providing hazardous waste assessment and cleanup advice to commercial, industrial and governmental clients. Mr. Henry is a Registered Geologist and a Registered Environmental Assessor in the state of California. Mr. Henry has been a panelist at numerous professional seminars and conferences and has authored several papers on lender environmental policies. Under Mr. Henry's direction, Bank of America has cosponsored national conferences on the environmental issues in lending and real estate transactions.

MR. ROBERT O. ZDENEK

[Biography was not available at time of printing. Please refer to conference addendum.]

**DOCUMENTS THAT SUPPORT
PANEL 3K: BANKING OVER THE RAINBOW: TURNING BROWNFIELDS INTO
GOLD**

**PRESENTATION BY CLEMENT DINSMORE
AT PANEL CHAIRED BY OFFICE OF THE COMPTROLLER OF THE CURRENCY
SEPTEMBER 5, 1997**

[The Federal Environmental Protection Agency is granted permission to reproduce this paper for the Brownfields '97 conference in Kansas City.]

Contact:

**Clement Dinsmore
3726 Veazey Street, N.W.
Washington, D.C. 20016-2229**

**202-244-6648 [phone]
202-244-9224 [fax]**

I. INTRODUCTION

Thank you, Ray.

Ray and I confirm that bipartisan collegiality can work in the United States Senate. Senator Jake Garn with Ray's aid took the lead on the lender liability issue beginning in 1991. After much discussion within the Banking Committee and with the Senate Environment and Public Works Committee Ray with my support was able to include effective lender and fiduciary liability protection language in the Senate Superfund reform bill that was reported out of committee in 1994. With the failure of Congress to enact that legislation a two year delay occurred before somewhat different legislation passed last September.

The lender and fiduciary liability subject lead me into Brownfields. Beginning in 1992 Banking Committee Chairman Donald Riegle, for whom I worked, advocated funding for Brownfields recycling. The Chairman introduced similar bills in 1992 and 1993. Ultimately, we struck a bargain with the Senate Environment and Public Works Committee on the terms of the voluntary cleanup title--Title III--of the 1994 Superfund reform bill. The title incorporated funding and leveraging ideas that we advocated.

II. STATE INITIATIVES TO PROTECT LENDERS AND FIDUCIARIES

While the Congress was considering Superfund reform, the States were actively engaged in reforming their hazardous substance laws. Prior to the 1993-1996 period many States had amended their laws to clarify the liability exposure of lenders and fiduciaries. But, in their more recent actions States have altered their laws more substantially to limit the potential sources of financial risk to lenders and fiduciaries.

I will not attempt a national survey of the States' actions. Instead, I will highlight the actions of several States.

Pennsylvania in 1995 enacted its Economic Development Agency, Fiduciary, and Lender Environmental Liability Protection Act as part of a three bill package designed to facilitate the recycling of Brownfields in that State. Mellon Bank's counsel led the effort on lender and fiduciary liability protection. They took what Ray and I had developed in the Senate and went several steps further. Significantly, the Pennsylvania legislation:

- *requires proof either of direct causation or exacerbation of contamination by a lender, or the lender's knowing and willful compulsion of borrower action that causes contamination;

- *requires proof that a fiduciary controlled the property that caused or was the site of the contamination, and the contamination resulted from the fiduciary's gross negligence or willful misconduct; and

- *protects both lenders and fiduciaries against the claims of third parties and not simply those of the Commonwealth.

Illinois and Michigan in 1995 also amended their laws to limit significantly the potential liability of lenders and fiduciaries. The Illinois legislation:

- *protects fiduciaries and lenders from liability to the State or third parties, unless the lender following foreclosure or fiduciary directly causes contamination;

- *requires proof that the persons allegedly liable proximately caused or contributed to the contamination; and

*limits the recovery by the State or a third party to a person's proportionate share of cleanup costs.

The Michigan legislation:

*requires proof that an alleged owner or operator, including a lender following foreclosure, is responsible for the activity causing the contamination;

*like Illinois requires apportionment of cleanup costs;

*protects lenders in a manner resembling EPA's lender liability rule that the Congress codified in last fall's CERCLA and related Solid Waste Disposal Act amendments; and

*protects fiduciaries against personal liability, although they may be liable for their negligence as well as for gross negligence and willful misconduct.

III. THE 1996 CERCLA AND RELATED SWDA AMENDMENTS

I will briefly note several significant differences between the lender and fiduciary liability protection provisions of the 1994 Superfund reform bill that did not pass and the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996.

The 1996 amendment codified the EPA's April 1992 lender liability rule. Unlike the 1994 bill it does not:

*impose a dollar cap on liability, if incurred;

*condition liability protection upon compliance at loan origination with environmental risk assessment guidelines issued by the EPA Administrator in consultation with the Treasury Secretary; and

*limit the liability of various Federal credit and banking regulatory agencies acting in various capacities, including as receiver or conservator for a financial institution.

The 1996 amendment, unlike the 1994 legislation, also:

*exposes a fiduciary to liability in both its fiduciary and personal capacities, if the fiduciary through negligence causes or contributes to a release of a hazardous substance;

*creates liability for the fiduciary that engages in negligence rather than a failure to exercise due care, which in some States may require proof of more than negligence; and

*excludes from protection persons that become fiduciaries of contaminated property with the intent of avoiding CERCLA liability.

III. RECONCILING MARKET REALITIES WITH POLITICAL GOALS

The flood of State legislative actions in recent years responds to, and creates, political expectations that hazardous substance regulatory programs will work more effectively and efficiently and Brownfields will be recycled.

Realizing these expectations with respect to properties that may number in the hundreds of thousands and are most highly concentrated in older, urban centers is difficult in an economic and political context, where with few exceptions:

America's population is becoming more widely dispersed;
economic activity is not simply becoming dispersed within the United States but around the globe;
and
the most highly developed economies—all countries with substantially more intense land use and population density than American practice—are also developing or altering their policies concerning the recycling of former industrial sites.

While the States, Federal EPA, and local communities throughout the United States have embarked upon many exciting initiatives and achieved much with respect to developing a public consensus that contaminated, previously urbanized land should be recycled rather than lie fallow, there are many, additional factors that complicate the successful realization of this goal.

These factors include the existence of multiple, Federal, State, and local environmental and land use regulatory regimes in addition to those relating to the management of hazardous substances. The Clean Air Act, for example, has significant effects upon the ability of local communities to reuse vacant, industrial sites for new industrial uses or commercial uses that generate substantial automobile or truck traffic.

I will focus on one of these complicating factors. That is the increasing mobility of capital and the related competition for capital that communities burdened with Brownfields face.

Bankers and investors among you are more familiar than I with the global changes occurring in the intermediation of capital that enable you and me to extend credit or invest equity in companies or projects anywhere in the world. The dynamics are illustrated by the increasing allocation of consumer savings—particularly now in a mature, bull market—to mutual funds that invest in companies—small, medium, and large—doing business in other countries. Savings management and its related fee income are the focus of attention of most commercial banks in this country.

The dynamics, also, are illustrated by the emergence of the real estate mutual fund industry—especially the real estate investment trusts. In recent years the equity capitalization of this sector has mushroomed, and with their capital growth REITS have rapidly expanded their geographical scope of investment opportunities. Only a few years ago, for example, the Oliver Carr Company was a developer of several office buildings in downtown Washington, D.C.. Today CarrAmerica Realty Corporation manages a \$1 billion plus portfolio of suburban office buildings throughout the United States.

The point is that you and I through our bank, a mutual fund, a REIT, or other investment vehicle can move our savings capital anywhere in the United States or the world that appears opportune to us or the managers of our funds.

In contrast, the communities most burdened with Brownfields are immobile. Their Brownfields sites don't move, and their populations, including available labor, often chose not to move. These communities do not have the same scope of economic opportunities, as we and those now intermediating our savings capital do.

I will provide one illustration, before I close. The City of Philadelphia has many, vigorous community development organizations. Each has a clearly defined geographical focus. If Brownfields sites exist within a CDC's community, as they usually do throughout the City, the revitalization of the community will require

the cleanup and reuse of the sites. As long as the community's population chooses to remain, their opportunities are limited by the Brownfields' reality.

The same is not true for the major financial institutions and corporate citizens of Philadelphia that have created partnerships with the local CDCs. State corporate income tax credits have helped encourage the development of these partnerships, which are doing many wonderful things. But, the reality remains that you and I, if we were depositors or otherwise customers of Philadelphia's participating banks, could elect to direct our savings to alternative investments that focused on opportunities elsewhere than the local communities in the City that are struggling with the reality of Brownfields.

IV. CONCLUSION

The prospect for successful recycling of Brownfields is highly variable. It depends upon many factors that are highly local. Federal EPA is helping to enhance the creative dynamic of local communities and their constituencies that desire to reuse the Brownfields in their midst.

There, also, are many, common, non-local factors that affect the prospect for recycling Brownfields. These include current, public attitudes regarding the use of land, water, air, energy, human and non-human habitats, and other natural resources. The feasibility of reuse of many Brownfields, especially those concentrated in our urban centers, will be affected by whether public attitudes change to recognize both the economic and environmental values of a more efficient use of our natural resources, including our previously urbanized land.

Market mechanisms that recognize both these values may be emerging. One that may emerge more quickly than previously anticipated is auto congestion pricing. The rapid institutionalization of the E-Z Pass toll system—with the involvement of Chase Bank—within the New York City metropolitan region and from New York City to Washington may be a harbinger of congestion pricing's arrival on the Mid-Atlantic coast. Substantial investment in the energy efficiency of commercial and residential buildings in our cities may be another, favorable dynamic that suggests increasing recognition of the economic and environmental values of efficient use of resources. There are others—including introduction of the location efficient, residential mortgage that I hope the lenders among you soon will originate and sell to Fannie Mae and Freddie Mac.

Thank you.

(3L) Industry Update: Where Industry Sits on the Brownfields Issue

Friday, September 5, 1997

8:00 a.m. - 10:00 a.m.

Description: Is industry changing its position on brownfields? This panel will bring together representatives of different companies that have quite different views about buying, selling, and expanding to contaminated property.

Location: Room 1205

Speakers and Affiliation:

Mr. Jerry Prout (Moderator)

Mr. Roger Platt

Mr. Bernie J. Reilly

FMC Corporation

National Realty Committee

DuPont Company

MR. JERRY PROUT

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. ROGER PLATT

Roger Platt is national policy counsel for National Realty Committee (NRC), which serves as Real Estate's Roundtable in Washington for national policy issues. NRC members are America's leading real estate owners, advisors, builders, investors, lenders and managers.

Working closely with NRC's Environmental Policy Advisory Committee, Mr. Platt communicates to Congress, the Clinton Administration and federal agencies NRC's views on environmental issues impacting real estate, such as regulation of wetlands and stormwater runoff, Endangered Species Act requirements, liability for hazardous waste cleanup costs and indoor air quality controls. In addition, he is responsible for advocating NRC's positions on federal telecommunications policies. Mr. Platt serves as staff liaison on environmental and telecommunications issues to NRC's Executive Committee.

Prior to joining NRC in 1994, Mr. Platt acted as a consultant to President Clinton's newly formed Corporation for National and Community Service. Previously, he was a senior associate at the San Francisco law firm of Coblenz, Cahen, McCabe & Breyer, where he specialized in real estate and urban land-use issues.

Before joining Coblenz, Cahen, et al., Mr. Platt was an associate in the real estate department at Bianchi, Paxton, Engel, Keegin & Sherwood, a law firm in San Rafael, California, where he represented a variety of residential and commercial real estate companies.

Mr. Platt is a graduate of Harvard University and the University of San Francisco School of Law. He is a frequent contributor to American Bar Association and other journals covering federal environmental and land use policies. He is a member of the California and District of Columbia bar associations and serves on the board of directors of the Center for Watershed Protection.

MR. BERNIE J. REILLY

Mr. Reilly is an attorney at the DuPont Company where he has been responsible for environmental issues for over 20 years. He coordinates DuPont's response to the legal issues at its Superfund sites and is responsible for the environmental issues at the DuPont plants in New Jersey and Indiana. He also participates with the members of the Chemical Manufacturers Association (CMA) in adopting positions and lobbying Superfund reform. He chairs the CMA Superfund Liability Work Group and has presented the CMA testimony to several Congressional Subcommittees. He also is a member of the Superfund Settlement Project, and is a member of the team at DuPont working to get its older, vacant sites remediated and back into productive use.