

**Promoting More Equitable Brownfield Redevelopment:
Promising Approaches for Land Banks and
Other Community Land Development Entities**

Nancey Green Leigh
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Abstract

This project has focused on identifying promising approaches for improving the redevelopment prospects of the least marketable brownfield sites typically found in depressed urban neighborhoods. The current practice of many brownfield redevelopment projects is to select only the most marketable sites for remediation and redevelopment, essentially perpetuating the age-old “creaming” process. Private and public developers’ practices of avoiding the lowest market value parcels typically exclude disadvantaged neighborhoods from programs aimed at redeveloping brownfields. Doing so creates the potential for widening existing inequalities between better-off and worse-off neighborhoods.

This project specifically sought to identify land transfer procedures and processes through which land bank authorities and other community land development entities are willing to receive vacant brownfield property that is tax-delinquent and environmentally contaminated, and, able to arrange for remediation and sale of such property. The primary focus has been on an additional barrier typically associated with tax-delinquent properties: their low market values. For these properties, the taxes due are only one, and actually a more easily resolved, barrier to achieving property re-use. Thus, while the land bank authority could be helpful in forgiving the property taxes owed on the parcel as an incentive for re-use, the property’s redevelopment potential is still thwarted by its having little-to-no market desirability. It is this more difficult question of how to address sites in areas where demand for property is low, and contamination further complicates redevelopment, that we focus upon here in order to promote more equitable brownfield redevelopment.

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Promoting More Equitable Brownfield Redevelopment: Promising Approaches for Land Banks and Other Community Land Development Entities

I. Introduction

The work of this project has focused on identifying promising approaches for improving the redevelopment prospects of the least marketable brownfield sites typically found in depressed urban neighborhoods. The current practice of many brownfield redevelopment projects is to select only the most marketable sites for remediation and redevelopment, essentially perpetuating the age-old “creaming” process. Private and public developers’ practices of avoiding the lowest market value parcels (LMVPs) typically excludes disadvantaged neighborhoods from programs aimed at redeveloping brownfields. Doing so creates the potential for widening existing inequalities between better-off and worse-off neighborhoods.

In this project, we specifically sought to identify a land transfer procedure and process through which a land bank authority: [1] is willing to receive vacant brownfield property that is tax-delinquent and environmentally contaminated; and [2] is able to arrange for remediation and sale of such property thereby putting it back into productive use and enhancing the community.

The problems of properties that are vacant and/or underutilized, contaminated, as well as tax delinquent, often prove to be intractable in the current climate of brownfield redevelopment. While land bank authorities were established as vehicles by which to bring vacant and underutilized land into productive use -- through strategic transfer and resale of properties for economic redevelopment -- national environmental laws and regulations have, for the most part, effectively eliminated this possibility for contaminated properties. This has resulted from federally established conditions of joint and several liability for environmental contamination, under which a land bank authority’s acceptance of a donation of contaminated property could make it liable for that contamination and for the clean-up costs associated with it. Land bank authorities have, understandably, been unwilling to take on this liability. (Likewise, local governments have typically been unwilling to foreclose on such properties.) Thus, land bank authorities are unable to fully carry out their mandates and fulfill the promise they hold for resolving brownfield problems. Local governments lose in this process because they forego needed tax revenues. Communities suffer from blighted properties that may pose health and safety risks, and are more subject to vandalism, illegal dumping, and illicit activity. Meanwhile, the owner of the tax-delinquent property escapes legal action and the payment of taxes.

In this research, the primary focus has been on an additional barrier typically associated with tax-delinquent properties: their low market values. That is, if these properties were attractive to the real estate market, their tax delinquency status would not pose the

redevelopment barrier that it does. In these situations, the taxes due on the property are only one, and actually a more easily resolved, barrier to achieving property re-use. Thus, while the land bank authority could be helpful in forgiving the property taxes owed on the parcel as an incentive for re-use, the property's redevelopment potential is still thwarted by its having little-to-no market desirability. It is this more difficult question of how to address sites in areas where demand for property is low, and contamination further complicates redevelopment, that we focus upon here. We reluctantly conclude from our research that, at the present time, there is a paucity of programs and strategies to address tax-delinquent, low-to-no market value brownfield properties in marginal urban neighborhoods. Where tax-delinquent brownfield sites are redeveloped, they are typically marketable sites with prospective purchasers in strong or gentrifying urban neighborhoods.

II. National Review of Current Land Bank Activities and Brownfield Redevelopment Programs

We review here two entities, Land Trusts and The Federal Land Bank Association, to help set the context for the use of land banks for brownfield redevelopment, as well as, to identify how they are distinct from land banks.

A. Land Trusts

Land Trusts are generally private, non-profit organizations directly engaged in land transactions. Conservation land trusts, the most popular form of land trust, are commonly founded to protect natural areas and farmlands. They most often operate at the local or regional level to conserve tracts of land that have ecological, open space, recreational, or historic value. Conservation land trusts use voluntary devices such as direct land purchases, land donations and exchanges, and conservation easement gifts (donation of the development rights) to acquire the land they manage. Most land trusts have obtained tax-exempt status from the US Department of Treasury so that land and conservation easement donors are able to use the value of the property donated as a tax deduction. These financial incentives greatly assist land trusts in acquiring land as donations (Wright, 1992).

Community land trusts are engaged in social and economic activities in both urban and rural areas, but have little focus on conservation (Institute for Community Economics, 1982). Community land trusts are private non-profit corporations that are designed to acquire and hold land. Their goal is to secure access to affordable land and housing for the community members. A notable example is located in the Atlanta, Georgia. The South Atlanta Land Trust (SALT) purchased nine houses in a minority neighborhood that was experiencing a trend of deterioration. These homes were remodeled using funds from a variety of public and private sources. The newly renovated homes were then sold to low-income, single women. The titles of the homes are held by SALT and sales agreements limit the equity appreciation of the homes which will eliminate speculation

and ensure the homes continue to provide affordable housing opportunities in the community (Betancur, Leachman, Miller, Walker and Wright, 1995).

1. Eminent Domain Powers for Community Land Trusts

The power of eminent domain is most often used by public entities, but an interesting and innovative strategy used in Boston granted the power of eminent domain to a community organization. The power of eminent domain was granted to the Dudley Neighbors, Inc., a community land trust, to acquire vacant land and buildings in its neighborhood. The Dudley Neighbors, Inc. is governed by a board of directors that is made up of residents as well as representatives from the city of Boston, the State of Massachusetts, and the Boston's City Council. The organization received its power of eminent domain in 1988. As of 1995, the group had purchased much of the land it desired for its housing development and 300 housing units had been built (Betancur, et. al, 1995).

2. Land Trusts Used for Brownfield Redevelopment

Our review of the literature and interviews with land trust organizations indicates that land trusts are not currently active in brownfield redevelopment. We have found two exceptions: The California Center for Land Recycling (CCLR), and, Scenic Hudson.

a. California Center for Land Recycling (CCLR)

The California Center for Land Recycling is a statewide nonprofit organization that focuses on creating sustainable communities through identifying and implementing responsible patterns of land use and development. CCLR's mission is to encourage and facilitate land recycling and urban revitalization, thereby stemming urban sprawl and conserving greenspace. It was founded in 1996, as a project of The Trust for Public Land (TPL), with seed funding from the James Irvine Foundation. CCLR promotes the re-use and recycling of previously developed and passed-over land and buildings in California's cities, suburbs, and rural areas. CCLR has designed three programs (described below) to meet its goals: the Policies and Practices Program, the Project Learning Program, and the Information and Outreach Program (CCLR, 1999).

(1) The Policies and Practices Program

The Policies and Practices Program formulates specific approaches to reduce or offset the obstacles to, what would otherwise be, economically viable brownfield redevelopment. The program seeks to develop short- and long-term solutions that can be implemented in a cost-effective and politically viable manner. The program analyzes and disseminates information about policy reforms on the federal, state and regional levels, and explores the implications of their application in practice (CCLR, 1999).

(2) Project Learning Program

CCLR's Project Learning Program promotes active involvement in brownfield redevelopment projects: it identifies specific obstacles to redevelopment, derives and tests solutions, and seeks to generate broader recommendations for change that will result in brownfield redevelopment. Through an ongoing Request for Proposals (RFP) process, the Project Learning Program selects several brownfield redevelopment projects each year for assistance and creates strategic partnerships with the project sponsors. CCLR's involvement has a limited time frame—up to one year—in which it focuses resources and efforts for removing specific hurdles to project success. These can include contamination and remediation issues, economic feasibility, regulatory compliance, financing and community-based decision making on projects and remediation plans (CCLR, 1999).

The Project Learning Program also makes small grants available to projects selected through the RFP process. These grants are available for retaining outside consultants who assist the project sponsors in achieving specified goals for the site, as well as for other purposes. Consultants can assist with community-consensus building, economic feasibility studies, site re-use planning and site design. A list of services and assistance offered by the Project Learning Program and a sample of recent projects are provided in the appendix as Table 1 (CCLR, 1999).

(3). The Information and Outreach Program

CCLR's Information and Outreach Program provides information and educational resources to organizations and individuals interested in land recycling and land use issues through a web site, numerous print publications, and presentations at conferences and workshops. The program gathers, packages, and disseminates information on land recycling and related land use, economic development, and social issues. The program uses information provided by the Project Learning Program and the Policies and Practices Program (CCLR, 1999).

b. Scenic Hudson

Scenic Hudson is the second of the two land trusts we found in our national search that engage in brownfield redevelopment. It is an environmental advocacy organization and land trust located in Poughkeepsie, New York. The organization began an urban initiative to identify derelict riverfront properties and devise strategies for acquisition, remediation, and environmentally friendly re-use of the most promising sites. In May of 1997, Scenic Hudson initiated the redevelopment of a twelve-acre abandoned industrial waterfront for a public park. Development of the Irvington Waterfront Park represents the first time that the State of New York has used its Clean Water/Clean Air Bond Act Funds to remediate a contaminated site. The property was purchased for \$5.4 million with funds from a private source, and, an additional \$3.6 million was allocated by the Village of Irvington for remediation, removal of buildings, and park development. The funds for the city were assembled from a variety of sources including bonds, the village

recreation fund, a Community Development Block Grant, and contributions from the parcels' sellers. Scenic Hudson will convey the park to the Village of Irvington in twenty years on the condition that the property remains available for public recreation. The park is scheduled to open in late 1999 (Rosenberg, 1998).

The Irvington Waterfront Park is not the only urban project for which Scenic Hudson has donated time and money. Scenic Hudson has also completed an analysis of nine Hudson River cities and villages with brownfield sites. The land trust's interest in revitalizing these sites is directly related to its expectation that the re-use of these properties will shift development away from greenfields and back into urban areas. In April 1997, Scenic Hudson acquired two properties on the Beacon Waterfront that contained a total of twenty-one acres. The organization is working to transform the properties into an area that will bring people to the water's edge for recreation and shopping. Six months of community-based planning efforts resulted in a development plan that includes both public open space and a mix of compatible, water-dependant commercial uses. Construction of the project was slated to begin the summer of 1999 (Rosenberg, 1998).

The activities of Scenic Hudson, which are focused on the urban environment, yield several lessons for other land trusts (Rosenberg, 1998):

- Land trusts can be useful in urban areas by providing professional staff and access to resources for establishing new parklands.
- Land trusts can assist urban communities in building new partnerships and leveraging investment in urban areas while continuing to meet their own goals and objectives.
- Common land trust strategies such as pedestrian easements and/or conservation easements can help reduce property acquisition costs.
- Forming partnerships with other nonprofits, municipalities and state agencies can help to improve the quality and success of projects undertaken by land trusts in the urban environment.

3. The Untapped Potential Land Trusts Have For Brownfield Redevelopment

The lack of land trust activity in brownfield redevelopment appears to be attributable to the conservation goal of most land trusts. Because the predominant goal of most conservation land trusts is that of preserving natural areas, brownfield redevelopment has simply been outside the scope of interest for many of these organizations. Some land trusts have extended their conservation focus to include urban green space preservation and creation. This interest in urban green space could provide an excellent opportunity for land trusts to become involved in redeveloping urban brownfields for use as urban parks and open space.

In 1994, to help cities meet the need for more parks, the Trust for Public Land (TLP) created the Green Cities Initiative to provide assistance in real estate acquisition, finance,

and negotiations. The Initiative is also exploring new ways of involving communities in public finance strategies and park management (TLP, 1999).

Scenic Hudson has proven through its work that, with cooperation from public and private organizations, land trusts can be effective vehicles for brownfield redevelopment. If land trusts choose to expand their conservation goals to include urban open space, they could potentially become very helpful partners in public/private projects to create green space and parks from remediated brownfields.

B. Strategies for Funding Acquisition, Remediation, and Redevelopment of Brownfields

As we noted at the outset of this report, there appear to be very few options for financing the redevelopment of low-to-no value brownfield properties. Land trusts are an option we believe deserve strong consideration for meeting this need. Land trusts acquire land directly through purchase or donation. Because of their non-profit status, donations to land trusts are tax-deductible which thereby provides an incentive for landowners to donate property. As many land trusts obtain funding from a variety of private organizations and foundations, the land trust could be a promising mechanism for increasing private fund use in brownfield redevelopment (TLP 1999).

Several federal land trust programs have been created to meet a variety of needs, including land protection within federal parks and forests, easement acquisitions in forests and wetlands, and state and local park development. In the non-federal arena, state and local governments have authorized bond initiatives and dedicated taxes to protect land. The following approaches may be used to *create green space* on remediated sites. However, they hold little promise for funding the site remediation that must first occur prior to converting to green space. We will return to this need later in this report.

1. Land and Water Conservation Fund

The Land and Water Conservation Fund (LWCF) is the largest source of federal money for park, wildlife, and open space land acquisition. As enacted, a portion of the money is allocated for federal land purchases while another portion goes to states as matching grants for local park projects. Over the years, the Trust for Public Land has completed hundreds of land protection projects using LWCF money, including national wildlife refuges, national parks, historic sites, endangered Civil War battlefields, and key recreational areas within national forests (TLP 1999).

2. Transportation Enhancements

Originally authorized in 1991, the Intermodal Surface Transportation Efficiency Act (also known as ISTEA, and, pronounced “ice tea”) provided an important source of federal funds—transportation enhancements—for various park and recreation projects. ISTEA stipulated that ten percent of federal funds distributed to states through the

Surface Transportation Program be dedicated to transportation “enhancements.” Between 1991 and 1997, \$2.6 billion went to enhancement projects such as bicycle and pedestrian facilities and the conversion of abandoned rail corridors into greenways and multi-use trails (TLP, 1999).

3. State and Local Finance Campaigns

In response to the combination of increasing need and decreasing federal funds, citizens around the country are organizing to pass local funding measures, such as bond acts or dedicated taxes to purchase lands for open space (TLP 1999).

C. Programs to Address Brownfield Sites with Low-to-No Market Potential

From our review of land trust activity, we have found no programs that have been developed that specifically address brownfields with low-to-no market value. However, there is a mutually beneficial connection between brownfield redevelopment and land trusts in the re-use of brownfield sites as open space. In a recently published report, the Trust for Public Land observes: “Parks and open space create a high quality of life that attracts tax-paying business and residents to communities.” It further notes that the creation of urban parks and recreational open space can stimulate commercial growth and promote inner-city revitalization. Paul Grogan, former president of Local Initiative Support (LISC), a community development group in New York City, is quoted in the report as agreeing that open space can play a crucial role in revitalizing low-income, inner-city neighborhoods:

Low-income neighborhoods are principally residential neighborhoods where the economics have gotten weak because of depopulation and disinvestment. The key to restoring their economic vitality is restoring the residential vitality. The residents of such communities regard quality open space as vital to the health of their community. (Lerner and Poole, 1999)

We believe this notion of using green space to revitalize low-income neighborhoods can be directly connected with the redevelopment of low-to-no market potential brownfield sites in these same areas. By performing risk-based remediation to protect the community, brownfield sites with low levels of contamination could be used to create green space and improve the quality of the area. By risk-based remediation, we mean environmental clean-up to a level determined to be acceptable considering the post remediation use of the property and the human and environmental receptor risks that this use would present (Davis, 1997). As the community improves and the property becomes more marketable, the land may be remediated further to allow for alternative uses or be kept as open space for the community.

D. Federal Land Bank Associations

Federal land bank associations are lending institutions that are part of the Farm Credit System. These institutions specialize in providing credit and related services to farmers, ranchers, and producers or harvesters of aquatic products. Forty federal land bank associations offer long term, fully amortized financing for: land purchases, refinancing of existing loans, rural home purchases and refinancing, home site purchases and refinancing, construction loans for homes and farm and ranch improvements, agribusiness site purchases, capital structures, and initial working capital (FCBT, 1998).

1. Current Use and Potential Use in Brownfield Redevelopment

Despite the suggestion in their title, there is no connection between federal land banks and brownfield redevelopment. The lack of the activity by federal land banks in brownfield redevelopment stems from the narrowness of their mission: to lend capital to rural farmers and homeowners. *Thus, it is currently only at the local level that we find potential for using land banks to promote brownfield redevelopment.*

III. Land Banks

A. Community Land Banks

A community land bank operates much like the community land trust discussed earlier. The difference in these two land management processes is in the time period under which land is held in community ownership. The community land bank can hold land for either the long- *or* short-term, while the community land trust is intended for long-term community ownership (Betancur, et. al. 1995).

The Southeast Community Organization helped to organize residents in the Baltimore community of Fells Point to form a community land bank in an effort to combat the deterioration of absentee-owned buildings. The land bank purchased homes of absentee owners, rehabilitated buildings, and sold or offered lease-purchase arrangement for the structures to the land bank members in the community. The city assisted the process in providing low cost loans for renovations in the area. Eventually, 110 properties were land-banked throughout the community (Betancur, et. al. 1995).

Although the community land bank is an interesting and effective land management vehicle, it requires high levels of coordination between members that can pose a barrier to its effectiveness. Furthermore, to date, the primary focus of community land banks has been on housing. Thus, this report confines its focus to the more common public land banking system known as a local land bank authority. We note, however, that the public local land bank authorities described below could be easily modified for use in community land banks.

B. Local Land Bank Authorities

Local land bank authorities focused upon in this report are varied in their structure and specific role in redevelopment. In general, they are established by either a city and/or county to address the problems of urban blight and to promote redevelopment. Vacant, abandoned, underutilized, and/or tax-delinquent parcels of land in urban areas pose barriers to redevelopment and represent a loss to the tax base. Land bank authorities have been established to acquire tax-delinquent properties for the purpose of returning such properties to productive use. Land banks are most commonly nonprofit entities that are empowered by state and/or local governments to waive or forgive back taxes owed on a property. By forgiving back taxes, a land bank hopes to spur redevelopment that will, in turn, create tax-generating properties in the future.

The ability to clear back taxes is a critical step in the redevelopment of tax-delinquent properties. If the taxes owed on a property were not waived by the land bank, the next owner would become liable for the back taxes. These back taxes would therefore increase the cost, and, decrease the desirability, of redeveloping the properties.

Although a land bank works directly with tax-delinquent properties, it is not the entity that forecloses on these properties. The land bank authority enters into the process after the properties have entered into the tax sale process. The land bank authority typically receives an advance list of properties that will be offered for tax sale. If no bid equal to the full amount of all tax bills, interest, and costs owing on the property is received at the tax sale, the authority has the ability to acquire the property. A deed is issued to the land bank authority and the property enters the land bank system.

Our search for land banks with an organizational structure suggesting they may be potential agents for brownfield redevelopment yielded only eight land banks from across the nation. These land banks, discussed in the sections which follow, include the: Cleveland Land Bank (Cleveland, Ohio), Martha's Vineyard Land Bank (Martha's Vineyard, Massachusetts), Nantucket Land Bank (Nantucket, Massachusetts), Massachusetts Land Bank—currently MassDevelopment (Boston, Massachusetts), Heritage Land Bank (Anchorage, Alaska), Louisville/Jefferson County Landbank Authority (Louisville, Kentucky), Fulton County Landbank Authority (Atlanta, Georgia), and Milwaukee Land Bank (Milwaukee, Wisconsin). Only one of these land banks, the Louisville/Jefferson County Landbank, actually focuses on brownfield redevelopment. The remaining seven have organizational structures that have the potential to effectively address brownfields.

1. Barriers to Land Banks Pursuing Brownfield Redevelopment

Our review of current land bank activity has revealed that, with the two exceptions discussed below, land bank authorities do not take a pro-active stance on brownfield redevelopment. The lack of activity in brownfield redevelopment by land bank

authorities can be most often attributed to the authority's operational limitations, its fear of legal liability, and/or, its lack of funds to cover remediation costs.

a. Operational Limitations:

The two major operational requirements that currently deter land banks from entering into brownfield redevelopment are:

- The need to identify an end user for a property before the property can be acquired by the land bank.
- The limited scope of activity for which the land banks were originally established.

For example, the Nantucket and Martha's Vineyard Land Banks in Massachusetts were established for conservation purposes; they rarely deal with properties that would be considered brownfield though their organizational structure (discussed in section III.D.1) makes them ideal candidates to do so.

b. Fear of Legal Liability

As with any owner of contaminated property, land banks are often concerned about the legal liability associated with brownfields. Although most state volunteer clean up programs offer liability exemptions for municipalities, the issue of federal liability still has to be addressed when land banks choose to acquire contaminated properties.

Federal legal liability arises from the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund. Both federal and state governments have developed programs and guidelines aimed at eliminating the barrier that legal liability can create. As a point of clarification, it is not the intent of federal or state programs to release responsible parties from their legal obligation to clean up property that they have contaminated, but, rather, to facilitate brownfield remediation and redevelopment by reducing the fear of unwarranted legal liability. CERCLA, itself, has sections that establish liability exemption for certain "innocent" parties. Landowners who are not responsible for contaminating the property, who did not know, and, had no reason to suspect contaminants were present on the property, are not liable under CERCLA sections 107(b) and 101(35). This is often referred to as the "innocent landowner defense." Sections 101(20)(D) and 101(35)(A) protect federal, state, and local governments from owner/operator liability if they acquire contaminated property involuntarily as a function of performing their governmental duties. Activities covered under this exemption include acquisition due to abandonment, tax delinquency, foreclosure, or, through seizure or forfeiture authority. This process was further clarified in June of 1997, and helps to facilitate the work state and local brownfield redevelopment programs (US EPA, 1998).

For land bank authorities that are a part of local government, the above-mentioned program should protect the acquisition of contaminated properties through the land bank's normal operational functions. However, it would be prudent for any land bank seeking to acquire contaminated properties to contact their regional US EPA office for further legal clarification and assistance with the redevelopment process.

c. Lack of Funds to Meet Remediation Costs

The often costly remediation of brownfields is another, and has become, by far, the more significant, barrier to the use of land banks in brownfield redevelopment. Even when the mission of the land bank is to eliminate blight and spur redevelopment, both of which are directly related to brownfield re-use, limited budgets serve to prevent interested and willing land banks from acquiring brownfields for remediation and redevelopment.

C. Land Bank Authorities Involved in Brownfield Redevelopment

In our national search of land bank authorities, we found only two land banks that are currently addressing brownfield redevelopment: the Cleveland Land Bank and the Louisville/Jefferson County Land Bank Authority. Of these two land banks, only the Louisville/Jefferson County Land Bank has actively pursued brownfield properties and made the required changes in its by-laws to effectively acquire, remediate, and redevelop contaminated properties.

1. Cleveland Land Bank

The Cleveland Land Bank (CLB) does not have a specific policy for brownfield property, and has only recently been confronted with the need to redevelop a potential brownfield property. The land bank's general policy is to review the list of properties that will be included in a Sheriff's Tax Sale to identify those that it may be interested in acquiring. The decision about what properties to acquire is made through examination of parcel records. If possible contamination is identified on any parcel, the land bank may choose to avoid the property. If, however, the parcel is deemed important for the redevelopment of an area, CLB will further investigate the property through a phase one Environmental Impact Assessment (Sternad 1999).

The Cleveland Land Bank was recently given a parcel that was suspected of being contaminated. This is the land bank's first experience with a contaminated site. Phase I and II Environmental Impact Assessments are being performed because this property is considered essential to the local redevelopment plan for the area. Final plans for acquisition and remediation have not been completed (Sternad, 1999).

2. The Louisville/Jefferson County Landbank Authority

The Louisville/Jefferson County Landbank Authority in Louisville, Kentucky, was the only land bank authority our research found to have specifically created a mechanism to

address brownfields. The Landbank Authority is a cooperative partnership made up of four taxing districts: the City of Louisville, Jefferson County, the Commonwealth of Kentucky, and the Jefferson County Board of Education. Each of the four taxing districts provides a representative to make up the land bank authority's governing board (Nett, 1999).

The Landbank Authority, established in 1989, was not originally created to address brownfield properties. In 1997, the Landbank Authority accepted a resolution that would permit any of its member organizations to acquire brownfield properties through the land bank's property acquisition channels. Stipulations were made in the resolution that the risks associated with the acquisition of a brownfield would be "confined to the member acquiring the property through the Landbank Authority program; and ... that this member will indemnify the other members of the Landbank Authority..." (Resolution 53, 1997). This resolution also established four criteria that must be met before a brownfield property can be acquired through the Landbank Authority.

These four criteria are:

1. The property is abandoned.
2. The property is known to be contaminated by hazardous material or substances.
3. The costs of remediating the contamination on the property is considered to be reasonable in relation to the value of the property.
4. There exists a potential purchaser for the property after the remediation of the contamination (Nett, 1999).

In 1994, Louisville created a citywide brownfield redevelopment initiative as part of its application process for Empowerment Zone status from the US Department of Housing and Urban Development (HUD). Though not successful in the national Empowerment Zone competition, the city was named an Enterprise Community (EC) and awarded \$3 million. In 1995, Louisville received a Brownfield Pilot Site grant. With the \$200,000 from this grant, the city launched site assessment activities in targeted areas in the EC. One of those sites was the Ni-Chro Plating facility. City officials believed that because of the interest shown by a local business owner, the site would make a good pilot project (Pepper 1997).

The Ni-Chro Plating site was a chemical plating facility that had been abandoned for several years. The US EPA performed an emergency contamination removal at the site in 1987 at a cost of \$168,000. The site had been abandoned for nearly seven years when, in 1994, a neighboring business owner, the Louisville Dryer Company, approached the city with an interest in purchasing the property. The company stipulated its purchase of the property was contingent upon the city resolving the property's environmental issues and providing future liability protection after the property transaction. The company employed approximately twenty-five people at the time of its first meeting with the city

and through the expansion of the facility, hoped to hire at least ten to fifteen more employees. The city decided to assist the owner with his expansion project, rather than forcing the Louisville Dryer Company to relocate to another area (Pepper, 1997).

Along with the environmental concerns of the prospective purchaser, financial problems were also a major barrier to the re-use of the site. The US EPA had assessed almost \$200,000 in liens for its past clean-up activities to the property, while the assessed value of the property was only \$35,000. Because of the discrepancy between costs and property value, the site would never be attractive to a perspective purchaser unless the burden of the liens could be removed. After researching the liens, the US EPA determined that the statute of limitations on the liens had expired, so they were forgiven. At this point, the Landbank Authority acquired the property through tax foreclosure with knowledge of the contamination. Additional assessment and sampling of the site was conducted by the city after the title was transferred to the Landbank Authority. The environmental assessment process revealed nominal contamination and the city proposed a risk-based remediation strategy. It suggested leaving low-level contaminated soils on site that would be capped by gravel and the building on the property. The owner of the Louisville Dryer Company worked with the community to resolve some design concerns and reduce the impact of the facility on the area (Pepper, 1997).

The State of Kentucky approved the Site Management Plan and the soil remediation plan for the Ni-Chro site and issued a No Further Action Letter to the City on August 26, 1997. The letter required certain institutional controls, even though the characterization testing had indicated no need for such controls. Those controls included deed restrictions prohibiting all but industrial and/or commercial land uses consistent with the physical condition of the property as of the date of the State's site investigation. The letter also stated the property would be subject to review every five years to ascertain whether additional remedial action might be necessary to protect health or environment. Believing the deal's closure was imminent; the Landbank Authority executed a deed in February of 1999 conveying the property to Louisville Dryer. The Commonwealth's Division of Waste Management in the Department of Environmental Protection responded February 24, 1999, that the Division had no objection to the buyer's plan to demolish deteriorating portions of the building so long as an impermeable cap was maintained over the site. At the time of this research, the buyer had not as yet scheduled a date for closing (Nett, 1999).

When asked to indicate the problems that arose during the acquisition, clean-up and eventual redevelopment of the brownfield site, Mr. Nett, Administrator of the Land Development Program for the City of Louisville, responded that he had encountered:

Every problem documented in the literature: acquisition of site control; reintegration of title with cure of title defects and extinction of liens and encumbrances; zoning and land use regulatory issues to be resolved (zoning, setbacks, parking); site characterization and remediation to State Environmental Protection Dept. satisfaction; time delays in securing approvals and

authorizations across jurisdictional lines; problems in negotiating a disposition and re-use of the property in light of state-imposed land use controls and restrictions as to future use and development. (Nett, 1999)

These problems illustrate the additional complexities associated with brownfields that can stall or prevent their success as redevelopment projects.

Funds for the Ni-Chro project were assembled from several sources. The Louisville Brownfield program received strong support from the US EPA in the form of its Brownfield Pilot grant and an additional \$75,000 “seed grant” that was established through the state. The city has secured \$6.5 million in preliminary private and foundation commitments to purchase stock in a new Community Development Bank. While the Community Development Bank funds are not specifically directed toward brownfield projects, the city hopes that the more investor-friendly atmosphere developed through the bank’s incentives to stimulate the redevelopment of the area will encourage brownfield clean-up in the EC area. In 1995, Louisville received \$7 million from HUD in support of the EC plans. A portion of these funds will be used for brownfield projects (Nett, 1999).

Through the use of the Louisville/Jefferson County Landbank Authority to clear the title for the Ni-Chro site, a highly improbable redevelopment effort succeeded. Due to the large debt owed on the property, along with the environmental contamination and liability issues, this site would surely not have been redeveloped without the public sector’s provision of strong technical and financial support.

As work for remediating Ni-Chro was proceeding in 1996, the question arose of how to retain the proceeds from the final sale of the property for clean up of other sites in the brownfield program (Pepper, 1997). The Landbank Authority normally would receive the proceeds from a sale of landbank property and then distribute the proceeds to the four taxing entities. In this case, however, it wanted to retain the funds for future acquisition and remediation of other brownfield sites. Thus, a fund has been established to direct profits from the sale of remediated brownfield such as the Ni-Chro facility to use in remediating future brownfields. This required legislative as well as Louisville and Jefferson County Landbank Authority board member approvals. The account is funded solely from revenue generated by the sale of Landbank Authority properties whose acquisition the LBA had authorized despite knowledge of the suspected contamination. The fund is made up of gross receipts: there is no deduction for expenses of acquisition or disposition of the brownfield properties. The fund is currently housed in the City Finance Department in a revenue account assigned to the Office of Health and Environment. In the future it is possible that the account will be assigned to the City Department of Housing and Urban Development, or, any successor entity which services the Authority and maintains its asset records. The city manages the fund as fiduciary for the LBA member jurisdiction requesting that the contaminated property be acquired. At the present time, the City of Louisville is the only member to have requested the acquisition of any contaminated property (Nett, 1999).

As of January 1999, the Landbank Authority had acquired only one brownfield site. The Landbank Authority is also pursuing, through foreclosure, a site that was previously remediated through the Commonwealth's superfund emergency clean-up program. The Landbank Authority also holds title to other properties that are suspected of being contaminated (Nett, 1999).

D. Potential Use of Land Banks for Brownfield Redevelopment

The most promising potential use of land banks for brownfield redevelopment lies in their ability to clear title of tax-delinquent property. This process will facilitate the redevelopment of many tax-delinquent brownfields and has the potential to focus on low-to-no market value properties.

1. Land Bank Strategies for Funding Acquisition, Remediation and Redevelopment of Brownfields

The staff and program of the Louisville and Jefferson County Landbank Authority, Inc. are funded entirely out of the City of Louisville's General Fund. An alternative method of funding land banks has been established in Massachusetts. Both the Nantucket and Martha's Vineyard Land Banks are funded by 2% transfer fees which provide funds to pay off bonds that were issued for the purchase of open space. The Nantucket Land Bank was established in 1983 by a special act of the Massachusetts Legislature. The Martha's Vineyard Land Bank was created one year later. The Massachusetts State Legislation authorized the land banks to issue bonds and notes, including notes in anticipation of bonds, for the purpose of acquiring land and interest in land for conservation. This 2% transfer fee is levied on all but a few exempt property transfer types and must be paid to the land bank before the deed can be registered. If the purchaser of a property refuses to pay the transfer fee to the land bank, a lien in favor of the land bank is issued upon all property and right-to-property belonging to the purchaser (Krauss, 1999). The mission of both of these land banks is to preserve open space, rather than to redevelop brownfield properties. However, the use of a transfer fee by land banks to create a fund for brownfield remediation and redevelopment could hold great promise and should be investigated for use in other communities.

2. Programs to Address Brownfield Sites with Low-to-No Market Potential

Due to our specific interest in low-to-no market potential sites, we conducted a series of interviews with state and local brownfield experts to determine if their programs addressed such sites. We found only one example in the State of Massachusetts' recently established Brownfield Redevelopment Fund. In 1998, the Massachusetts Government Land Bank merged with the Massachusetts Industrial Finance Agency to form the Massachusetts Development Finance Agency (MDFA). In the same year, the Brownfield Redevelopment fund was established and placed under the management of the MDFA. Thirty million dollars were appropriated by the Massachusetts State Legislature for the Brownfield Redevelopment Fund during the Commonwealth's 1998 regular session. The

fund is to be kept segregated from other agency funds. Proceeds and income from the fund are to be invested and reinvested—through the provision of loans and grants to finance environmental site assessments and environmental clean-up actions—to promote development in economically distressed areas of the commonwealth (MassDevelopment, 1999).

The agency may make and administer grants and loans to finance environmental site assessments and environmental clean-up actions provided that the project meets established criteria. A list of selected criteria for assistance is presented in the appendix as Table 2 (Chapter 463, 1998 Regular Session).

IV. Local Brownfield Programs

Because our research uncovered so few land bank authorities engaged in brownfield redevelopment, we broadened the research focus to include municipalities that did not have a specific land bank authority, but did have a municipal office that dealt with tax-delinquent properties and their redevelopment. The activities of these municipalities have yielded some useful insights for land bank authorities.

Many municipalities and counties have developed brownfield remediation and redevelopment programs. While often funded by state and federal programs, these programs have been modified by local governments to fit the specific needs of their brownfield problems. Many municipalities started their brownfield initiatives by focusing on publicly owned or tax-delinquent properties. The advantage of this specific focus is that a municipality has easy access to the site, as well as control over decision making.

A. Kalamazoo, Michigan

The Kalamazoo Brownfield Redevelopment Initiative (BRI) was established in 1994 to redevelop publicly owned land. Three major goals of this project are:

1. To retain control of land development and the desire to fit development patterns into the master plan and community's idea of what they wanted their town to become.
2. To clean up publicly owned property and sell those properties to increase the local tax base.
3. To use state money to clean up property (state program requires the property be publicly owned for money).

Kalamazoo had a collection of land that it had acquired over the years through sheriff sales of tax-delinquent properties. The city has the right to purchase the property, at a very low price, before the properties are offered for sale to the general public. Kalamazoo has used state money for its public property project and is now looking at

bringing private properties into the project to help private property owners (City of Kalamazoo).

In 1996, the US EPA selected the City of Kalamazoo for a Brownfield Pilot grant. For this grant, they developed an inventory of publicly owned brownfield sites. The city's Brownfield Redevelopment Initiative identifies, prioritizes and acquires brownfield sites that have reverted to public ownership due to the failure of previous owners to pay property taxes. The staff then assembles resources to conduct site preparation activities such as demolition and environmental site assessment. Through public input sessions with community stakeholders, the city seeks to ensure that high quality purchase and development agreements are negotiated between it and perspective developers (City of Kalamazoo).

The following is a list of benefits of the Brownfield Redevelopment Initiative identified by the City of Kalamazoo.

Community Benefits:

- Protection of public health and a cleaner environment.
- Tax base enhancement by finding productive uses for neglected sites.
- Job creation and retention.
- Spin-off redevelopment and stronger neighborhoods.
- Creating an alternative to urban sprawl and the loss of open space.

Benefits to developers who successfully redevelop these sites are significant:

- Reimbursement for eligible environmental expenses (base-line environmental assessment, "due diligence" and additional response activities).
- State Single Business Tax Credit for up to 10% of investment in property improvement (\$1 million upper limit on credit).
- Resources for enhancing private investment with public improvements.

The City's criteria for Inclusion in the Brownfield Plan are:

- Site or adjoining site must be contaminated and meet the "facility" designation (as defined by part 201 of the Natural Resources and Environmental Protection Act).
- Priority given to sites which are publicly owned, abandoned or generate minimal property tax base (if privately owned).
- Private owners of sites which otherwise qualify must consent to inclusion in the Plan (City of Kalamazoo).

Kalamazoo created Brownfield Redevelopment Districts in 1997. Brownfield authorities were established with a board of directors to oversee these districts. These authorities

formulate a redevelopment plan for a project that is then sent to the state for approval. The authorities then acquire properties through purchase with funds from the Kalamazoo general fund for economic development, or, through donations of public or private properties. The city's Brownfield Redevelopment Authority and District allows the city to capture taxes on designated brownfield sites to cover the costs of testing and cleaning up environmental problems. Developers who invest in these sites are given significant tax credits (City of Kalamazoo).

Community input is a key feature in the city's brownfield redevelopment process. As the projects completed to date have not had pre-identified end users, the city has used stakeholder groups (community members, environmental specialist, city staff, etc.) to design projects and plan for redevelopment. In essence, the Brownfield Redevelopment Districts emphasize community development over traditional economic development goals. That is, the choice of end product does not focus solely on the marketability or economic benefits of a particular piece of property (Gordon, 1998).

MacKenzie Bakery is an example of a completed BRI project. The bakery was constructed on one acre of a 3.5-acre brownfield site. Site preparation and land acquisition for the entire brownfield cost the city \$89,000. The one-acre parcel was sold for \$25,000. Instead of the sale proceeds going back to the city's budget for other projects, \$1,250 has been set aside to create a job-training program and the remaining \$23,750 is being used for public infrastructure improvements around the site (Gordon, 1998).

Kalamazoo works cooperatively with the US EPA and the Michigan Department of Environmental Quality (MDEQ) to bring expertise and resources to each brownfield redevelopment project. A list of these resources is presented in the appendix as Table 3.

B. Emeryville, California

While the City of Emeryville has successfully redeveloped some of its large brownfield properties, small parcels and the remaining large parcels had proved more difficult to redevelop. This was due to time and regulatory uncertainty as well as the issue that the estimated returns were insufficient to offset transaction and potential clean-up costs. Redevelopment investment was difficult to obtain with such risks and uncertainties. In 1996, Emeryville applied for, and received, a Brownfield Redevelopment Pilot Grant for the purpose of expediting the redevelopment of the more difficult-to-redevelop brownfields through a Groundwater Management Program. The city decided to identify pathways of contaminated groundwater to humans and the environment with the goal of solving problems regionally and cooperatively, rather than on a piecemeal, site-by-site basis. Clean-up levels would be established for the entire city, based on proposed land use. The tasks of the city's Brownfield Redevelopment Pilot were to:

1. Convene a broad-based community task force to address soil and ground water concerns related to land use, zoning, economic development,

environmental justice and the environment and to guide and review studies performed by consultants.

2. Compile hydrogeologic, soil and groundwater information through data gathering from all available sources, including the regulatory agencies, city files and property owners.
3. Incorporate hydrogeologic and environmental data, with economic, land use and zoning information, into a GIS database. Using this comprehensive database, design a user-friendly information retrieval interface.
4. Identify the sensitive pathways to the deeper groundwater aquifer and San Francisco Bay and define acceptable residual levels of soil and groundwater contamination based on proposed land use zoning.
5. Provide ongoing regulatory assistance to developers, property owners and residents.
6. Conduct additional soil and groundwater sampling to complete a hydrogeologic map of Emeryville and to determine if contaminants are leaching to San Francisco Bay or the deeper aquifers.
7. Develop a Groundwater Management Program to find areas in need of immediate remediation, define standard soil clean-up levels based on location and land use, institute finding mechanisms and design community/education programs to increase environmental awareness (City of Emeryville Project Status Report 1998).

The groundwater management program is designed to protect public health, deep groundwater resources, and the ecological resources of San Francisco Bay, while providing regulatory relief and more cost certainty for property owners, developers, and responsible parties. Recognizing that brownfield redevelopment is often a time consuming process that must be tackled in steps; the city has developed and implemented portions of a four-step program that allows the city to achieve this goal. As articulated in the City of Emeryville's Project Status Report of 1998, these steps are:

STEP 1

Facilitate the Redevelopment of Brownfield Sites

This requires taking the lead in brownfield redevelopment by performing essential pre-development activities before considering specific brownfield redevelopment proposals. Such steps include community involvement and visioning, area-wide assessments, data banking, financial assistance programs and regulatory assistance.

Develop Financial Incentives

Emeryville investigated numerous financial mechanisms for assessment and remediation of brownfield properties. Brownfield redevelopment expenses, such as soft costs (i.e., assessment, engineering), remediation and infrastructure can be funded through many

sources, each with its own conditions. These come in the form of loans or grants. Using several of these sources, Emeryville and its partners redeveloped several significantly contaminated large brownfield sites. It used tax increment financing, assessment districts, USR Funds, an EPA Brownfield grant, tax incentives and responsible parties to help assess and remediate its brownfields.

Emeryville also interviewed property owners and developers to determine if a loan/grant program for site assessment would stimulate redevelopment of *small* sites. It learned that while the programs would be welcome, what most stakeholders need first is a simplification of the regulatory process and city assumption of groundwater management. Further, to be useful, site assessment financial assistance needed to be backed by remediation financial assistance.

Provide regulatory assistance

Emeryville has provided many property owners and developers with an understanding of the regulatory process and assistance in obtaining sign-off.

STEP 2

Manage the Regulatory Process

In addition to regulatory assistance, it may be necessary for cities to proactively intervene in the confusing regulatory process. Emeryville seeks to simplify the property redevelopment process by combining an environmental sign-off process within the regular planning approval process. Emeryville plans to assume authority for processing environmental sign-off for soil and groundwater investigation and clean-up projects within city limits. The city will step in as an “intermediary” between owners/developers and regulatory agencies. Regulatory agencies will retain approval authority, but the sign-off will be processed by the city. This step reinforces the one-stop shop concept and, it is hoped, will facilitate redevelopment of smaller properties.

Establish the city as a “Center under Memorandum of Understanding (MOU)”

Under this step, owners/developers are to submit soil/groundwater reports to the city. The city manages the regulatory process and seeks approval from the appropriate regulatory agency. This is provided as a fee for service. The MOU was developed among the city, its redevelopment agency, the regional board, and DTSC. Under the agreement, the city will be empowered to “sign-off” on sites that do not require extensive regulatory oversight, and, it will serve as a liaison for more complicated cases.

Streamline Regulatory Decisions for Soil

Provide interested parties with a simple look-up table for clean-up numbers or pre-approved procedures to mitigate soil problems.

STEPS 3 AND 4

Steps 3 and 4 deal directly with the city's plans to monitor and manage groundwater throughout the municipality. By taking responsibility for groundwater management, the city can address contaminated groundwater as a whole and help facilitate overall redevelopment.

According to its Project Status Report, redevelopment of smaller sites still lags. The city simply does not have sufficient resources to address all brownfield sites and needs to find ways to refocus the regulatory framework to assist in the redevelopment of small sites. The city needs funding for citywide monitoring and simplification of the regulatory process. A loan/grant program needs to be established for small site assessments and remediation. The city has learned that loan/grant programs for assessments are useful only if funds are also available for remediation. A citywide program for managing groundwater needs to be established. The city's assumption of groundwater management will virtually eliminate all risks to property owners and developers, thus allowing stakeholders to focus on redeveloping brownfield to uses accepted by the community.

Emeryville's list of recommended actions for other cities to facilitate brownfield redevelopment within their borders includes:

1. Strengthen foundations. Since brownfields often coexist with other problems, such as lack of infrastructure and community services, localities must be prepared to cover these deficiencies and offer incentives for non-brownfield related development costs.
2. Build community trust. A program should be developed through communication and cooperation of all stakeholders.
3. Be realistic. Local government must have reasonable redevelopment expectations. Unless the economics of a project work, brownfield redevelopment will not happen.
4. Share risks, share rewards. In exchange for the community's acceptance of bearing residual risk for risk based clean-up, a portion of the saving on remediation expenses must be shared with the community.
5. Recognize big problems; small problems. Generally, small sites and projects need proportionately more loan, grant and/or technical assistance than larger sites and projects (City of Emeryville Project Status Report).

C. The City of St. Louis, Missouri

For cities plagued with an excess of tax-delinquent parcels, programs such as the land bank authorities are one tool used to combat the problem of tax-delinquent property within the city. The City of St. Louis, Missouri, however, is unusual in that it manages the redevelopment of properties without the assistance of a land bank authority. During an interview, Thomas Pike, Assistant General Council of the St. Louis Development

Company explained that the State of Missouri has adopted a statute that requires the City of St. Louis to foreclose on all properties that have been tax-delinquent for more than three years. This process takes the properties out of tax-delinquency and puts them under the Land Reutilization Authority's management. This program has made the City of St. Louis the largest landowner in the city; it owns approximately 12,000 parcels. Managing and redeveloping this large number of parcels is a formidable task (Pike 1999).

St. Louis acquires tax-delinquent parcels in a process similar to that of land bank authorities: if, after a parcel is sent to tax auction, no bid equal to or more than the amount owed in back taxes is bid, the property is transferred directly to the Land Reutilization Authority. The fundamental difference between the typical land bank authority and the St. Louis Land Reutilization Authority is that the nature of property acquisition under the land bank's policies is voluntary, while it is mandatory under the St. Louis plan. While most land banks only acquire properties that have a potential purchaser, or, that they consider to be marketable, St. Louis must enter into the Land Reutilization Authority and manage all parcels that have been tax-delinquent for more than three years. Even with the large numbers of properties in the city's control, Mr. Pike indicated that redevelopment is often inhibited by small lot sizes and the inability of the city to effectively assemble land into parcels that would be attractive to prospective purchasers task (Pike 1999).

Like the Louisville and Atlanta land banks, St. Louis's Land Reutilization Authority's redevelopment focus is market driven. Because the city has such a large number of parcels, it focuses on those parcels that would be most attractive to purchasers or that have an interested purchaser (Pike, 1999). Thus, its selection process does not concentrate on the low-to-no market value properties that are the primary focus of this research. It would appear, then, that such properties will be held indefinitely by the Land Reutilization Authority, which also means that the neighborhoods they are located in are saddled with long-term negative externalities.

V. Federal Brownfield Projects and Initiatives

The United States Environmental Protection Agency (US EPA) is the lead federal agency concerned with brownfields. The US EPA is at the center of the nation's environmental policies and programs and is the obvious agency to address the remediation of contaminated property. But, the agency cannot effectively manage all of the issues related to the very complicated process of brownfield redevelopment. The remediation of a brownfield site requires sound environmental techniques and knowledgeable environmental specialists but, for a successful redevelopment program, there are factors outside of the US EPA's area of specialization requiring incorporation. To improve the effectiveness of brownfields redevelopment, several other federal agencies are working in cooperation with the US EPA to facilitate the re-use of contaminated properties. The US Department of Housing and Urban Development (HUD), the US Department of Commerce, the Department of Treasury, the Department of Labor, and the Economic

Development Administration have joined forces with the US EPA to promote the redevelopment of brownfield sites (Davis, 1997). Included among the US EPA's programs that address brownfields are:

- Brownfield Assessment Demonstration Pilots
- Brownfield Clean-up and Revolving Loan Fund Pilots
- Brownfield Conferences
- EPA Summer Teachers' Institute
- International Partnerships
- Job Development and Training
- Liability and Clean-up Issues
- Partnerships and Outreach
- Regional Initiatives
- Brownfield Showcase Communities
- Brownfield Success Stories
- Brownfield Tax Incentive
- Targeted Brownfield Assessments (US EPA 1, 1999)
- Brownfield Clean-up Revolving Loan Program
- Better America Bonds

A. Better America Bonds

A recent, but potentially quite promising, addition to the list of federal programs that can be used in brownfield redevelopment, is the Better America Bond. The Better America Bond is a new financing tool developed as part of the Clinton-Gore Livability Agenda. The program expects to generate \$9.5 billion in bond authority to preserve open space, protect water quality, and clean up brownfield sites. Communities that issue the bonds will pay zero interest and the principal is due after fifteen years. Instead of a payment of interest from the bond, bondholders will receive tax credits from the federal government in an amount equal to the interest they would have received from the community. The tax credit bond provides a subsidy for the community as compared to a traditional tax-exempt bond because no interest is charged and no principal payments are made until the end of the fifteen-year period. An issuer of a million dollar Better America Bond will save more than \$700,000 over fifteen years by using this new technique as opposed to a traditional tax-exempt bond, assuming annual payments into a sinking fund at 5% (US EPA 2, 1999).

The bonding authority will be distributed directly to a community through a competitive process. The Better America Bond program will be administered by the EPA in a manner similar to its Brownfields program. The procedure will involve the submission of a proposal to the US EPA by an interested state, locality, or tribal government. The proposal will be reviewed by EPA along with other interested federal agencies. Program structure and application criteria will be determined by the EPA after gathering input through an outreach program with stakeholders (US EPA 2, 1999). It appears, however, that the Better America Bond program is structured to allow the community to have significant latitude in determining how it will pay off the bonds. In terms of this project's focus on low-to-no market brownfield properties, it would appear that the community could elect to use this Bond program to fund their remediation and re-use.

B. Brownfields Clean-up Revolving Loan Fund Pilots

The purpose of the Brownfields Assessment Demonstration Pilots is to provide access to low interest loans for states, political subdivisions and Native American tribes to facilitate the clean up and redevelopment of brownfield properties. To be eligible for this program, the managing entity must have been awarded a Brownfield Assessment Demonstration Pilot grant or have jurisdiction over a site in that has been part of the Targeted Brownfield Assessment program in the past. The use of loan funds are restricted to brownfield properties that have been determined to have had an actual release or a substantial threat of release of hazardous substances (US EPA 3, 1999).

VI. State Brownfield Programs

By the late 1980's and early 1990's, many of this nation's states and cities were wrestling with issues of brownfield properties. Environmental and economic development regulations were in many cases creating increased barriers to the redevelopment of areas with known or suspected contamination. This prompted state initiatives to develop plans to overcome the barriers to brownfield redevelopment. Chicago and Wisconsin were among the first states to offer programs to assist in the redevelopment of brownfield sites. During the past decade, the number of state programs to assist in brownfield redevelopment has increased from one in 1989, to forty-six in 1998 (Bartsch and Anderson, 1998).

State brownfield programs are nearly as varied as the states themselves, but commonly contain one or a combination of initiatives to limit legal liability, assist in financing assessment and clean-up, and/or provide technical assistance. While each state's program is unique, the programs typically incorporate the three areas below into their efforts to redevelop brownfields.

A. Legal Liability Relief

Many state programs offer limited legal liability relief for innocent owners or prospective purchasers. Letters of No Further Action, Covenants Not to Sue, or Certificates of Completion are forms of liability relief that can be provided by a state to a landowner after remediation of a site to state specific standards. Although not all states offer liability relief programs, they are common and useful strategies to stimulate redevelopment of brownfield sites.

A major problem associated with state liability relief programs is that federal legal liability is not automatically forgiven with the conveyance of state liability relief. This has caused severe problems in the past because landowners could still be held liable for environmental contamination by the federal government even after receiving a release of legal liability by a state program. Currently, the federal government is working with states to create memorandums of agreement (MOA). A Superfund Memorandum of Agreement (SMOA) or Memorandum of Agreement (MOA) can be negotiated between a state and the US EPA, making the state and US EPA partners in the redevelopment process. EPA has stated that one objective of this program is for regional offices to use the negotiation of voluntary clean-up Superfund Memoranda of Agreement (SMOAs) as an opportunity to define a division of labor between the region and states. This would occur by defining what kinds of sites fall can fall within the MOA (US EPA, 1996).

B. Financial Assistance

Financial assistance in the form of loans and grants are an important part of many state brownfield redevelopment programs. Because brownfield sites are typically considered risky investments, it is often difficult to secure funding for redevelopment of contaminated areas. Low interest loans can be helpful for redevelopment of sites that will produce sufficient returns to meet remediation costs. Many of the small and/or low-to-no market value sites will cost more to clean up and redevelop than they will ever recuperate after resale. Grants will be necessary for most projects in areas where the demand for property is low and the remediation costs are high. As this research emphasizes these low-to-no market sites, a sample of state programs that provide funding that applies to areas where these sites are typically found is provided to show that there is a range of viable funding mechanisms for these areas. However, linking these funding mechanisms specifically to low-to-no market value sites remains a significant challenge.

- Connecticut's Urban Sites Remediation Action Program was capitalized with \$30.5 million in state bond funds for assessment and remediation of sites in distressed municipalities and targeted investment communities.
- Massachusetts' Brownfield Redevelopment Fund, as indicated in the land bank section, has focused its \$30 million of funds both for low interest loans and grants for site assessment and clean-up in economically distressed areas.

- Ohio’s Urban and Rural Initiative Grant Program provides grants to municipalities or non-profit organizations in distressed areas (Bartsch and Anderson, 1998).

C. Technical Assistance

There are a variety of state programs that provide technical assistance to brownfield redevelopment projects. We focus here on Wisconsin’s because of its potential usefulness to the brownfield problem focused upon here. Wisconsin’s Redevelopment Assistance program offers technical and redevelopment assistance for investigation, clean up, determination of liability, and other activities related to the redevelopment of a brownfield site.

The state also offers a Business Development Assistance Center (BDAC). This program assists individuals or organizations interested in brownfield redevelopment by coordinating state agency programs and providing this information to the public (Wisconsin DNR). The BDAC, and similar programs found in other states, can greatly assist developers in recycling contaminated property by providing in one place the information and requirements of which brownfield developers need to be aware. Determining what regulation and program may be relevant to a specific project can be difficult; this “one-stop shop” approach can remove some of the uncertainty involved in brownfield redevelopment. These technical assistance programs can encourage the involvement of individuals and organizations that would otherwise lack the knowledge and experience necessary to successfully redevelop contaminated properties. They could be particularly valuable for community development corporations seeking to redevelop the brownfields that are the primary focus of this report.

VII. Not-for-Profit Brownfield Programs

A. The Development Fund

The Development Fund is a California 501(c)(3) nonprofit organization that develops new financing vehicles to attract capital from private financial institutions and corporations for community purposes. The Financing Initiatives for Environmental Restoration (FIER) is a Development Fund program that was designed to increase private-sector financing to recycle blighted and contaminated lands (FIER Report of Research Phase, 1998).

The concept of FIER, in brief, is to create a major new private-sector-financing intermediary for the clean up and redevelopment of “brownfield” and other impaired lands. The new initiative will provide a financially sound investment vehicle for corporations and financial institutions to participate in the redevelopment of these blighted lands. FIER will create an innovative financing program, the first of its kind in the country. If successful, it is expected to become a national model. FIER is based on

the Development Fund's successful track record of creating innovative private-sector financing mechanisms for a range of community development activities. (FIER Report of Research Phase, 1998).

FIER developed a broader and more holistic definition of "impaired land" to address the inter-related nature of environmental and economic problems. Impaired land is defined: as land which is vacant or underutilized because of actual or perceived contamination (US EPA); as operating business sites where the threat of on-site contamination could lead to blight and loss of jobs if not cleaned up; and as economically impaired sites with potential contamination issues that are not yet manifested. For land recycling to be effective, FIER program developers believe the definition of land improvement needs to address economic and environmental issues in a comprehensive way. (FIER Report of Research Phase, 1998).

1. FIER's Promise For Financing Gaps

A primary objective of the developers of FIER was to identify the critical financing gaps in the market of impaired land and to determine which of these represent pressing needs that might be able to be served by a new financing source. Identification was sought of projects that are financially viable but, for various reasons, are not being served by the existing private and public markets. Research determined that a major portion of the market of impaired lands is not being served by existing sources. Financing from banks and private investment programs are limited to large projects, established borrowers, and those projects with relatively high rates of return. Public sector programs serve to meet some of these gaps, especially when they fit a city or county's redevelopment objectives, but these public programs can only serve a small portion of the overall market. A number of common characteristics of projects that are not being served by existing private and public sources were identified (FIER Report of Research Phase, 1998):

- Smaller and less established property owners without sufficient collateral and other resources to qualify for conventional financing.
- Smaller projects in which the transaction costs required to underwrite the deal, including environmental due diligence, are relatively high.
- Projects with low or marginal returns, which represent positive cash flow, but are not sufficient to interest conventional financing sources.
- Projects that require special attention because of their complexity or location.

Included in this last category are projects that need multiple layers of financing sources to make them viable, sites with unusual contamination issues, and properties in low income and minority areas, which involve actual or perceived uncertainty.

The FIER design process will seek to create a vehicle that can serve some combination of these critical financing gaps. By creating a financing intermediary, FIER will be able to address many of the barriers identified (FIER Report of Research Phase, 1998).

2. Next Steps

FIER's collaborative design process will involve bank and corporate executives, public agencies, regulators and nonprofit representatives from the environmental and community justice fields. FIER's ultimate goal is to create a permanent source of private-sector capital to restore and redevelop impaired lands in California and to provide a national model for generating private-sector capital for land recycling (FIER Report of Research Phase, 1998).

Blighted and contaminated sites are found disproportionately in disadvantaged neighborhoods, urban areas and communities with ready access to transportation and city centers. Lack of private-sector financing has been one of the biggest roadblocks to restoration of these contaminated lands. Financial institutions and venture capital initiatives, because of their risk and return constraints, are able to serve only a small portion of the brownfield market (FIER Report of Research Phase, 1998).

New federal and state programs provide incentives to increase private-sector involvement in brownfield redevelopment. These include:

1. New Community Reinvestment Act (CRA) Benefits
2. Federal Tax Incentives
3. Revisions to Ease Federal and State Lender Liability Laws
4. Proactive Programs to Expedite Federal and State Regulatory Approvals
5. FASB Requirements for Write-down of Corporate-owned Impaired Lands

FIER financing program will serve brownfield and other environmentally contaminated projects that are not able to procure financing from any of the existing banks, venture capital or government sources, but that represent financially sound investment opportunities. Examples might include: smaller projects, projects with positive but marginal economic value, projects that require relatively high underwriting costs because of their complexity or location.

FIER's structure will enable it to serve these types of projects in a number of ways:

1. Provide a risk-sharing mechanism
2. Creating a centralized source of dedicated expertise to mitigate transaction costs on complicated and higher risk transactions
3. Facilitating regulatory approvals in a centralized way
4. Providing a shield from legal liability for participants
5. Generating economies of scale and portfolio diversification to further mitigate risk (FIER Report of Research Phase, 1998)

3. Remaining Financing Gaps

The segments of the market served by the existing brownfield financing services focus either on lower-risk (banks), or, on high-risk/high-return transactions (private investment initiatives). This leaves a large section of the market unserved, many of which could be appropriate targets for FIER. The gaps can be described on two dimensions, the owner and the characteristics of the project itself.

Land owner types include:

1. Medium and small business seeking to clean up their land. They are usually less established borrowers that are unrated, do not have deep pockets, banking relationships or the required expertise to procure financing. These owners often need significant assistance getting through the complex environmental regulatory process.
2. Large corporations that are either financially unable or unwilling to conduct the remediation. Bankruptcy, lack of economic incentives, potential liability and the cost of remediation are all factors that can contribute to a large corporation's unwillingness to clean up a site. For most large corporate owners, financing is not the relevant barrier.
3. Cities and/or nonprofit organizations usually do not qualify for private sector financing and are not targeted by any of the existing financing sources. FIER could conceivably work through partnerships with these organizations to jointly remediate and develop contaminated properties.

Project Characteristic types include:

1. Projects that are relatively small and transaction costs and remediation costs relative to property value are above the level that existing financing sources are willing to pay.
2. Projects with relatively low or marginal returns (5%-10%). These projects are usually found in urban areas and are often inner-city vacant lots. These are classic brownfield and do not have the benefits of being in high-rent areas, economically prosperous areas or part of a master redevelopment plan. They do not have the potential for the above-average returns that are required for private-sector financing. The combination of low returns with smaller sites makes development especially problematic. If developed, they could help revitalize the surrounding inner-city community.
3. Projects that are complex, requiring specialized underwriting expertise and/or technical assistance such as complex or risky clean-up. Certain areas, even whole cities with high levels of contamination are effectively "brownlined." When complex environmental problems occur in contamination with a smaller site and low potential return, the development of such a project is often permanently stalled because of lack of financing (FIER Report of Research Phase, 1998).

In summary, although a market does exist to finance impaired properties, it is an inefficient one with significant financing gaps. As described above, some key obstacles to procuring private—sector financing for the average brownfield project include: High risk and uncertainty of remediation; the cost of maintaining specialized staff and the cost of underwriting; limited borrower expertise with remediation; lack of banking relationships; liability issues for both the lender and borrower; and regulatory uncertainty (FIER Report of Research Phase, 1998).

Since FIER will be a breakeven entity, it will be able to be more expansive in its underwriting than conventional financing sources. At the same time, FIER seeks in its design to be a prudent, safe and sound vehicle that provides reasonable returns to its corporate participants (FIER Report of Research Phase, 1998).

FIER will be designed to provide financing to project sponsors, who are expected to include a mix of private businesses, government agencies and nonprofit organizations pursuing brownfield restoration efforts. FIER's financing will address some combination of characterization, remediation and redevelopment needs. In addition to its financing role, FIER will provide a centralized vehicle for offering technical assistance, facilitating regulatory approvals and providing an interface with local government and community organizations (FIER Report of Research Phase, 1998).

B. CANDO Chicago (Illinois) Association of Neighborhood Development Organizations

The Brownfield Initiative of CANDO is to improve the economic conditions of Chicago's Empowerment Zone (EZ) and Enterprise Community (EC) residents. It seeks to do so by building the organizational capacity of the EZ and EC community development groups and individuals for resolving brownfield issues and promoting neighborhood redevelopment. The initiative fosters community-based partnerships to develop strategic visions for sustainable community development and increased economic opportunity for low-income residents. CANDO seeks to redevelop vacant land and abandoned properties, turning community liabilities into new community assets that have productive uses for current residents and future generations. The program includes two components: the Brownfield Redevelopment Institute and the Brownfield Predevelopment Initiative. As funding for CANDO's project and workshops comes from empowerment zone money, these projects are limited to communities located in the empowerment zone (Grodzin, 1999).

CANDO's Brownfield Redevelopment Institute is the component that specifically addresses the need for human and organizational capacity building. The institute delivers courses ranging from an introduction to real estate market analysis to analysis of phase two environmental reports. It has also worked with some communities to carry out projects and finance phase 1 and 2 environmental assessments (Grodzin, 1999).

The Brownfield Predevelopment Initiative seeks to build the organizational capacity of nonprofit groups to identify and address brownfield issues and promote redevelopment. CANDO experts are working with institute participants to produce market analyses of as many as twenty-four sites in a community, conduct phase I environmental assessment of fifteen of those sites and perform phase II testing for 9 sites. Community-driven site development concepts are formulated and then presented to possible sources of financing for implementation (Grodzin, 1999).

A recent addition to the CANDO list of project is the “2nd tier” site project. The project works with member groups to identify sites for which it then pays phase 1 and 2 environmental impact assessment (EIA) costs. To date the project has identified twelve sites for which it is performing market analyses and EIAs. The program was put into action in the final months of 1998. To date, no site has been taken completely through the process (Grodzin, 1999).

VII. Potential Post Remediation Uses of Low-to-No Market Value Sites

A. Risk-Based Remediation to Reduce Costs

The high costs and lengthy process of brownfields remediation have made it necessary for the implementation of risk assessment as a means of addressing the redevelopment of contaminated properties. In 1995, the American Society for Testing and Materials (ASTM) developed a clean-up strategy, referred to as risk-based corrective action (RBCA), to provide a standardized approach for risk-based clean-up (Dennison, 1998). The method combines the use of scientific techniques with site-specific and use-specific information to meet a dual end goal of remediation and redevelopment. The protection of human health and the environment is still at the center of this remediation strategy, but remediation is accomplished in a manner that integrates exposure and risk-assessment techniques. Thus, the goal of the RBCA approach is to design a remediation process that is practical, streamlined, consistent, and technically defensible at the same time that it is appropriate and cost-effective for any given site (Davis, 1997). *Taking a risk-based corrective action approach may be particularly necessary for low-to-no-market value sites given the greater likelihood that full remediation clean-up costs could exceed the value of the property.*

When employing a risk-based clean-up approach, data from site investigations is combined with expected activities associated with the potential end-use of the property. This approach enables environmental specialists to determine the risks of existing contamination using scenarios that assume certain types of activity on the site. For example, a future commercial or industrial facility would, in general, be able to tolerate higher levels of contamination than a residential or community use while maintaining the same level of risk to human health and the environment. In addition to identifying an intended end-use, risk-based strategies also incorporate the presumed remediation

technique to assure the remediation process does not pose an unacceptable level of risk to nearby receptors (Davis, 1997).

The US EPA and state regulators endorse the use of risk-based clean up of contaminated property as an acceptable means of managing environmental risk in a cost-effective fashion. Several states have published risk-based clean-up criteria that apply to projects in the state (Dennison, 1998). The US EPA only allows cancer-causing substances to remain on site in concentrations that will result in the risk of between 10^{-4} (one in 10,000 people) and 10^{-6} (one in one million people) excess cancer cases. This range is provided to account for differences in site-specific risk assessment. Most states set risk levels at 10^{-6} for residential areas, but allow an increased risk of 10^{-4} in industrial or commercial areas (Bartsch, Collaton and Pepper, 1996). These criteria assist developers in addressing remediation by defining how clean is “clean enough,” thereby reducing uncertainty as to whether remediation actions will receive the required regulatory sign-off. The use of risk assessment techniques also helps to inform and educate the public about the reasonableness and effectiveness of the clean-up process and what risks are associated with the redevelopment project.

B. Low-to-No Market Value Sites in Residential Areas

As noted in the discussion of risk-based clean up, the level of contamination tolerated on residential property is often lower than that allowed in commercial or industrial areas. While brownfields are most often associated with industrial areas, it is not uncommon to find brownfields in residential areas. Dry-cleaners and gas stations are prime examples of brownfield properties that are often located in older urban residential areas. However, small-scale commercial and industrial activity, typically individual proprietor-owned businesses, were often found in residential areas in previous eras. Auto repair and furniture repair shops are two examples of businesses that have typically caused property contamination. Depressed urban residential neighborhoods are unlikely to have a market-based demand for residential housing for which brownfield properties could be used. Thus, we would expect that any residential re-use of low-to-no market value brownfields would require public project funding.

It is possible that a redevelopment project could locate residential aspects of a plan on the least contaminated portions of a site, taking a risk-based approach. This would suggest a larger-scale housing project. It would preclude the use of small-lot brownfields.

C. Commercial/Industrial Re-Use

The commercial or industrial re-use of a contaminated property may often be the most cost-effective remediation strategy as risk-based clean-up standards are less stringent than those for residential re-use. However, properties that will hold the greatest appeal for private sector commercial and industrial re-use typically will be the best-sited and/or largest properties. That is, these are the properties that are benefiting most from the current “triage” or “creaming” process characterizing today’s brownfield redevelopment

efforts. They will typically not be the low-to-no market value properties that are focused upon in this report.

D. Recreational/Community Re-Use

It has been documented through surveys and studies that parks and open space are considered highly valued amenities. Homebuyers have identified natural open space as a feature they consider very or extremely important according to two 1995 surveys.¹ Gardens with native plants and walking paths, wilderness areas, community/recreation center and interesting small-scale parks were all highly ranked as well (Garvin and Berens, 1997). The affinity people have for green space can be observed in the increased real property values and marketability of property located near open space. Higher property values can generate increased property tax revenue and investments in area improvements.

Another 1995² poll designed to measure the quality of life found that two of the elements were critical to a satisfactory quality of life were: [1] low crime rates and safe streets, and, [2] greenery and open space (Garvin and Berens, 1997). Real estate analysts confirm assumptions that quality of life is a determining factor in real estate values, and, in turn the economic viability of an area. “Livability”, a place concept that includes green space, has been called “a litmus test” for determining the strength of the real estate market. Places rated high in livability attract people, who in turn attract companies, stores, hotels, and apartments (Lerner and Poole, 1999). Green space, therefore, is not only important to the quality of life that a community’s residents experience; it is also an economic development tool for the community.

As we first stated in the Land Trust section of this report, the remediation of key brownfield properties and the conversion of those properties into a variety of open space types can provide environmental, social, and economic benefits to a community. In this section, *we seek to emphasize that remediating and redeveloping low-to-no-market value properties into greenfield space can help improve the quality of life of the marginal neighborhoods/communities in which they are most frequently found.* Doing so can also be a positive economic development force in that contiguous property values may increase and may lead to an upward spiral of renewal.

IX. Current Programs and Funding Mechanisms in Atlanta

A. The City of Atlanta Brownfield Initiative

Despite receiving an EPA Brownfield Pilot grant in 1997, Atlanta’s brownfield redevelopment efforts have been slow to get off the ground. The city’s EPA Brownfield Pilot Initiative is supposed to promote an Industrial Redevelopment Strategy that focuses on the re-use of brownfields. The initiative has four objectives:

1. Site identification and inventory
2. Five Phase I and two Phase II pre-acquisition environmental site assessments
3. Two workshops for community and business leaders
4. Creation of local policies.

A key component to this initiative is the creation of the brownfield database during the identification and inventory of Atlanta's brownfields. As part of the Industrial Redevelopment Strategy, this database is to be linked to a geographic information system. This GIS will be made available to the public to allow prospective businesses looking for property that suits their needs_(City of Atlanta).

B. Key Government and Non-Governmental Organizations

1. The Fulton County/ City of Atlanta Land Bank Authority

The Fulton County/ City of Atlanta Land Bank Authority (LBA) is a nonprofit corporation that was established in 1991 for the purpose of returning abandoned, tax-delinquent properties to productive use. This authority was created through an Interlocal Agreement between Fulton County and the City of Atlanta, and its activities are overseen by a City- and County-appointed Board of Directors. The LBA has the power to waive or forgive delinquent ad valorem property taxes throughout Fulton County. In 1995, the Georgia General Assembly expanded the range of the land bank to enable any city within Fulton County to conduct business with the authority (Fulton County/City of Atlanta Land Bank Authority).

The power of the LBA to forgive delinquent taxes allows developers to obtain a clear and marketable title to a property at an affordable price. The LBA works with developers to facilitate the following types of projects:

1. Affordable, Single Family Homes
2. Affordable, Multi-Family Housing Developments
3. Commercial Projects
4. Community Enrichment Projects (FC/CA LBA)

A developer that is interested in working with the LBA submits an application to its Board of Directors. The LBA can assist developers in redeveloping tax-delinquent properties in three ways:

1. A developer may approach the LBA after securing an option to purchase the property. LBA guidelines allow it to limit the amount a developer must pay for a tax-delinquent parcel, enabling the property to be acquired at little-or-no cost. The acquisition cost savings are intended to encourage developers to

reinvest in property that would otherwise be seen as unsuitable for development.

2. The LBA has the ability to acquire a property on behalf of a developer through a judicial foreclosure process. The judicial foreclosure process requires approximately eight months and provides the developer with a clear and marketable title.
3. The LBA may purchase properties through tax sale. If a competitive bid is not placed at the sale, the LBA can tender a letter in place of monetary payment to secure a tax deed. The authority will then convey the property to a qualified developer for a price equal to the cost and fees associated with the tax sale (an average of \$1,500) (FC/CA LBA).

Georgia Senate Bill 338 amended existing State tax law to create an alternative to the existing tax foreclosure process. The statute enables local governments to adopt, by resolution or ordinance, a judicial in rem tax foreclosure process. This process, unlike non-judicial tax foreclosure processes, requires only a sixty-day redemption period rather than a twelve-month period. The judicial procedure also results in an insurable title while the non-judicial process does not. In order to use the judicial foreclosure process, taxes must be delinquent for a minimum of twelve months. After this time, the Tax Commissioner may file a petition against the property with the Superior Court. The petitioner must identify all interested parties so that copies of the petition can be sent to them. The petitioner must also file a notice in the appropriate court docket as well as advertise the filing of the petition in the official legal organ on at least two separate dates. A judicial hearing can be held no sooner than thirty days after filing the petition with the Superior Court. If the court finds that the petitioner had provided sufficient notification and the taxes are indeed delinquent, a sale may be ordered. The sale cannot occur sooner than ninety days after the court order and the notice of sale must be advertised. Once the sale has occurred, the owner has sixty days to redeem the property. If the owner fails to do so, the petitioner must file notification of the sale with the Superior Court within ninety days indicating whether the sale took place, the sale price, and the identity of the purchaser (FC/CA LBA).

The costs associated with the judicial in rem foreclosure process are paid for by a Land Bank Authority Acquisition fund appropriated by the Fulton County Board of Commissioners. The fund is created from five percent of the proceeds from the Bulk Sale of Tax Liens with Capital Asset Research Corporation (FC/CA LBA).

The preceding description of the Atlanta Land Bank Authority illustrates that the land bank's policies are not amenable to taking on the low-to-no market value properties emphasized in this report. The land bank has been designed to respond to market-driven or, developer-perceived opportunities to acquire and redevelop tax-delinquent properties that may, or, may not be environmentally impaired. While revisions to environmental laws make it possible for the land bank, as an agency of city and county government, to hold or truly "land bank" properties without fear of being held responsible for remediation, the land bank's design as a clearinghouse precludes it from assuming a true

land banking role. Addressing the low-to-no market value brownfield properties would require the Atlanta Land Bank Authority to assume a more pro-active development role; it would require additional funding and staff resources to acquire, hold, and generate re-uses for the properties.

2. Atlanta Neighborhood Development Partnership (ANDP)

The Atlanta Neighborhood Development Partnership (ANDP) was established in 1991 to lead and coordinate community-based development in the metropolitan Atlanta area. The four basic goals of ANDP are to:

- Support and enhance community-based organizations through operational support, technical assistance, training and the implementation of long range community economic development plans.
- Facilitate the production of affordable housing and the creation of mixed income neighborhoods.
- Create mixed-income neighborhoods by partnering with key organizations in Metro Atlanta.
- Develop an organizational philosophy to further develop the environment in which they operate.

ANDP currently is affiliated with seven local community development corporations (ANDP, 1999).

3. Atlanta Development Authority ADA

The Atlanta Development Authority ADA is a public authority created by the City of Atlanta to promote the revitalization and growth of the City through a comprehensive and centralized program focusing on community development and redevelopment. It represents a consolidation of the City's economic and community development efforts in real estate, finance, marketing, and employment for improving Atlanta's neighborhoods and quality of life. ADA is comprised of the Urban Residential Finance Authority, the Downtown Development Authority, and the Atlanta Economic Renaissance Corporation (ADA, 1999).

X. Possible Solutions to Atlanta's and Other Cities' Brownfield Issues

The original motivation for this project was to seek a solution to the problem of land banks, such as that of Atlanta's, being unwilling to accept tax-delinquent brownfield properties due to fears of becoming liable for the contamination on such properties. With such a solution, the prospects are improved for promoting productive land redevelopment and reducing property vacancies to enhance a community's economic development. Over the course of this project, the nature of the problem we sought to resolve has shifted, while the end goal of promoting land re-use and economic development has remained the

same. The nature of the problem has changed, on the one hand, for a positive reason: that is, as noted in section III, recent official clarifications of CERCLA mean land bank authorities that are a part of local government, and that acquire brownfield properties involuntarily (e.g., because they are tax-delinquent), are not liable for their contamination. On the other hand, removing the legal liability reveals that the real problem land banks have in taking on tax-delinquent, low-to-no market value properties is a lack of financial resources to be able to arrange for their remediation, sale and/or redevelopment. For example, the Atlanta/Fulton County Landbank operates on a model of clearing title on properties to allow private redevelopment to occur. It does not have the financial resources to act as the redeveloper itself. The Landbank, like almost all of the public or quasi-public entities we have identified engaging in brownfield redevelopment, is promoting a market-based, creaming process of redevelopment. While there is great validity in employing such processes, to do so *exclusively* poses a serious public policy issue. It serves to widen the inequality between the most depressed neighborhoods where the low-to-no market value properties are most likely to be found, and, the neighborhoods experiencing revitalization and brownfield cleanup.

Thus, the focus of this project became that of identifying promising approaches for improving the redevelopment prospects of the low-to-no market value brownfield. This necessitated the examination of different kinds of roles for landbanks than that defined for the Atlanta/Fulton County Landbank; identifying possible ways of raising revenues for land banks and any other community development agency to use in financing the remediation and redevelopment of low-to-no market value sites; and considering potential re-uses of such sites.

We conclude this report by briefly reviewing the most promising approaches for use in redeveloping low-to-no market value properties uncovered in our research, and, discussed in this report. First, we believe that while community land trusts have traditionally had little focus on conservation issues, their model could be adapted well for brownfield redevelopment efforts. These private non-profit corporations were designed specifically to acquire and hold land for affordable housing development. One approach for solving the problem of low-to-no market value brownfields could be a community land trust for brownfield redevelopment modeled after Boston's Dudley Neighbors, Inc. community land trust. What is particularly notable about this community land trust is the fact that the City of Boston gave it the power of eminent domain so that it could acquire vacant land and buildings in its neighborhood. This provides an alternative mechanism to a citywide land bank for acquiring brownfield properties, and, it can be used to target geographic areas in greatest economic decline.

Another promising alternative to the traditional land bank is also a land trust. Scenic Hudson has proven through its work that, with cooperation from public and private organizations, land trusts can be effective vehicles for brownfield redevelopment. If land trusts choose to expand their conservation goals to include urban open space, they could potentially become very helpful partners in public/private projects to create green space and parks from remediated brownfields. The Scenic Hudson land trust model specifically

addresses brownfield redevelopment for the purposes of stemming greenfield development.

To address the needs for financing the redevelopment of low-to-no market value brownfields, the Louisville Landbank Authority's approach is promising. It established a fund that uses the profits from the sale of remediated brownfields to fund future remediation projects. Another possibility for raising funds for land banks is suggested by the 2% transfer fee the state of Massachusetts authorized for two land banks to purchase open space. That is, the transfer fee idea could be adapted by land banks to create a fund for brownfield remediation.

As was noted previously in this report, because our research uncovered so few land bank authorities engaged in brownfield redevelopment, we broadened the research focus to include municipalities that did not have a specific land bank authority, but did have a municipal office or program that dealt with tax-delinquent properties and their redevelopment. The two municipalities engaging in noteworthy and innovative brownfield redevelopment were Kalamazoo, Michigan, and, Emeryville, California. Kalamazoo's brownfield pilot approach of creating brownfield redevelopment *districts* emphasizes community development over traditional market-based, economic development goals. The City uses stakeholder groups to design brownfield projects and plan for redevelopment.

Emeryville has determined, through surveying its property owners and developers, that offering financial assistance for site assessment alone is not effective. Instead, it must be backed up by remediation financial assistance. The City's brownfield program is based on the principle that "sharing of risks should lead to sharing of rewards." That is, if a community bears the residual risk for permitting the private sector to conduct risk-based clean up, a portion of the private sector's savings on remediation expenses should be shared with the community. The Emeryville approach to brownfield redevelopment also recognizes that smaller sites and projects require proportionately more loans, grants, and/or technical assistance than do larger sites and projects.

As we stated at the outset of this report, we have reluctantly concluded that there is paucity of programs and strategies to address tax-delinquent, low-to-no market value brownfield properties in marginal urban neighborhoods. If this deficiency persists, the current brownfield redevelopment movement will likely lead to a widening of intra-urban inequalities. We have detailed here approaches we believe hold promise for correcting this deficiency. We hope that this report may be useful to municipalities, landbank authorities, and community development organizations in helping them to recognize the need for, and to move towards, promoting more equitable brownfield redevelopment.

Endnotes

¹ Surveys conducted by American LIVES, Inc. and InterCommunications, Inc. in Warrick, Brooke and Alexander, Toni, “Looking for Hometown American”, *Urban Land*, February 1997, pp. 27-29, 51-53.

² This poll was conducted by the Regional Plan Association and Quinnipac College Polling Institute. Summary in “Avenues for Social Programming,” *Urban Land*, February 1997, pp. 30-31.

References

- Atlanta Development Authority. 1999. ADA homepage, About ADA (<http://www.atlantada.com/about/aboutmain.html>, 5/19/99).
- Atlanta Neighborhood Development Partnership, INC. 1999. Fellowship and Internship Programs Brochure.
- Bartsch, C., E. Collaton, and E. Pepper. 1996. *Coming Clean for Economic Development*. Northeast Midwest Institute (<http://www.nemw.org/cmclean.html>, 4/2/99).
- Bartsch, C., and C. Anderson. 1998. *Matrix of Brownfield Programs by State*. Northeast Midwest Institute, 29 Sept (<http://www.nemw.org/bfmatrix.htm>, 4/6/99).
- Betancur, J., M. Leachman, A. Miller, D. Walker, and P. Wright. 1995. Development Without Displacement Task Force Background Paper. The Chicago Rehab Network (<http://www.uic.edu/~pwright/dwd.html>).
- California Center for Land Recycling. 1999. *About CCLR*. CCLR homepage (<http://www.cclr.org>, 5/26/99).
- City of Atlanta. *The City of Atlanta Brownfield Initiative: Creating an Industrial Redevelopment Strategy for the City of Atlanta*, provided by the City of Atlanta.
- City of Emeryville. 1998. *Project Status Report, Emeryville Brownfields Pilot Project* (Nov).
- City of Kalamazoo. Kalamazoo Brownfield Redevelopment Initiative.
- Commonwealth of Massachusetts. 1999. 1998 Regular Session, Chapter 463, House Bill 5885 (<http://web.lexis-nexis.com/univer...>, 2/26/99).
- Davis, Todd. 1997. *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property*. Chicago, IL: American Bar Association.
- Dennison, M. 1998. *Brownfields Redevelopment, Programs and Strategies for Rehabilitating Contaminated Real Estate*. Rockville, MD: Government Institutes, Inc.
- Farm Credit Bank of Texas. 1999. All About Us. (<http://www.farmcreditbank.com/allabout/index.html>, 1/24/99)
- Fulton County/City of Atlanta Land Bank Authority. Program Description, provided by the LBA.
- Garvin, A., and G. Berens. 1997. *Urban Parks and Open Space*, Washington, DC: ULI-the Urban Land Institute.
- Gordon, Brenda. 1998. Assistant City Manager City of Kalamazoo. Interview (Oct).

Grodzin, Joshua. 1999. Assistant Director of Industrial Development, CANDO. Interview and correspondences (Jan).

Institute for Community Economics. c1982. *The Community Land Trust Handbook*. Emmaus, Pa.: Rodale Press.

Krauss, Cindy. 1999. Fiscal Officer for the Martha's Vineyard Land Bank. Interview (Apr).

Lerner, S., and W. Poole. 1999. *The Economic Benefits of Parks and Open Spaces*. Trust for Public Lands (<http://www.tpl.org>, 5/26/99).

MassDevelopment home page. (<http://www.magnet.state.ma.us/mdfa/predev.htm>, 4/16/99).

Nett, Fred. 1999. Administrator of the Land Development Programs for the City Louisville Kentucky. Interview and correspondences (10/98-5/99).

Pepper, Edith. 1997. *Lessons from the Field*, Washington, DC: Northeast Midwest Institute.

Pike, Thomas. 1999. Assistant General Council, St. Louis Development Corporation. Interview (June).

Rosenberg, Steve. 1998. "Working Where the Grass Isn't Greener: Land Trust in Urban Areas." *Land Trust Alliance Exchange* (Winter):5-9.

Sternad, Evelyn. 1999. Land Bank Manager for the Cleveland Land Bank. Interview (Feb).

The Development Fund. 1998. *FIER Report of Research Phase*.

Trust for Public Land. Greening America's Cities. TLP homepage. (<http://www.tpl.org/about>, 5/26/99).

US EPA. 1998. *Handbook of Tools for Managing Federal Superfund Liability Risks at Brownfields and Other Sites*. Enforcement and Compliance Assurance (Nov). (<http://es.eps.gov/oeca/osre/98.11.html>, 5/25/99).

US EPA[1]. *Projects and Initiatives*. US EPA Brownfield home page (<http://www.epa.gov/swerosps/bf/index.html#bfini>, 2/24/99).

US EPA[2]. *Better America Bonds*. US EPA Better America Bonds Homepage (<http://www.epa.gov/bonds>, 9/20/99).

US EPA[3]. *Brownfields Cleanup Revolving Loan Fund Pilots (EPA 500-F-99-168)*. US EPA (<http://www.epa.gov/swerosps/bf/html-doc/bcrlf.html>, 9/20/99).

US EPA. 1996. *Memorandum: Interim Approaches for Regional Relations with State Volunteer Cleanup Programs* (Nov)
(<http://www.epa.gov/swerosps/bf/html-doc/vcp.htm>, 2/99).

Wisconsin DNR. *Summary of Wisconsin's New Brownfields Programs and Initiatives*.

Wright, John B. 1992. "Land Trusts in the USA." *Land Use Policy* (Apr):83-86.

Appendix A: Project Learning Programs

Services and assistance offered by the Project Learning Program may include:

- Advisory services to municipalities, redevelopment agencies, developers, and community groups about environmental remediation and regulation, real estate development, financing, and marketing
- Technical assistance with site assessment, remediation planning and regulatory facilitation
- Facilitation of public/private partnerships for investment in land recycling
- Information and educational resources on land recycling policies, practices, and approaches
- Community capacity building support
- Small grants to local governments and community-based organizations involved in land recycling projects.
- CCLR offers consulting, advisory services, and assistance to local governments, redevelopment agencies, community development corporations, private (nonprofit and for-profit) developers, and local community-based organizations.

Project Learning Program sites include:

- In San Diego, CCLR is assisting a neighborhood health coalition to relocate a metal plating facility from a residential area and re-use the emerging brownfield for affordable housing.
- In Los Angeles County, CCLR is providing independent legal and environmental consultants to the City of Maywood to inform their decision to accept stewardship of a remediated Superfund site that is being converted into a much-needed neighborhood park along the Los Angeles River.
- In Pacifica, a coastal suburb of San Francisco, CCLR is providing the city and its citizens with independent design, economic feasibility, and community involvement consultants to help them collectively determine a future use for a closing sewage treatment plant site.
- In North Fork, a rural timber community located 15 miles south of Yosemite National Park, CCLR is facilitating a community involvement process and providing an economic development consultant to assist in the early stages of designing an economically feasible re-use plan for its recently closed mill site (www.cclr.org, 5/26/99).

Appendix B: MassDevelopment's Grant and Loan Program

(From Commonwealth of Massachusetts 1998 Regular Session, Chapter 463)

Selected criteria for the MassDevelopment's grant and loan program to finance environmental site assessments and environmental clean-up actions include:

- The project is located at a project site within an economically distressed area.
- Thirty percent of all funds administrators provide grants and loans to finance environmental site assessments.
- An applicant must transfer the results of the environmental assessment to the regional office of the department of environmental protection if the project is not completed.
- All projects receiving money from the fund are required to provide matching funds. The level of match is to be set forth in the fund guidelines. The required match may be waived in whole or part by the agency.
- No grant shall be awarded unless, and, until the applicant for such grant contributes an amount equal to 20% of the requested grant.
- Grants are available only to a city or town, redevelopment authority, redevelopment agency, economic development and industrial corporations, community development corporations or an economic development authority.

Applications must be submitted to the brownfield advisory group and agency for approval and must meet the following requirements:

1. The proposed redevelopment project will result in a significant economic impact in terms of the number of jobs to be created; or will contribute to the economic or physical revitalization of the economically distressed area in which the project site is located. A significant level of community benefits must be associated with the project
2. The financing from the fund must be necessary to make the proposed re-use of the project site financially feasible.
3. The applicant must certify that they did not cause or contribute to the contamination, operate the facility at the time of contamination or have a familial or business relationship with potentially liable parties. Although this provision may be waived with the approval of the boards of directors after full disclosure of relationship with a potential responsible party.
4. The applicant cannot be the subject of any outstanding administrative or judicial environmental enforcement.

The brownfield advisory group and agency review the redevelopment project considering the following factors:

1. Level of unemployment and poverty in the area and the census tract in the project area

2. Likelihood that the proposed action will adequately clean up the property in accordance with the laws
3. Presence of community benefit associated with the project including by not limited to the creator or revitalization of open space
4. Proximity of property to existing transportation and utility infrastructure appropriate to support the re-use
5. If the area is a designated federal empowerment zone or enterprise community.

Whether the municipality in which the site is located has made available substantial funds as grants, loans or tax abatement to further the project (Chapter 463, House Bill No. 5885, 1998). An economically distressed area is defined in Massachusetts Law chapter 23A, 3D as an area of three or more contiguous census tracts or one or more contiguous municipalities that:

1. The area has an unemployment rate that exceeds the state-wide average by at least 25%, or
2. Satisfies at least one of a set of established criteria. A sample of these criteria are :
 - The municipality is located in a metropolitan area where at least 51% of the households have incomes that are below 80% of the median household income for that metropolitan area.
 - The poverty rate is at least 20% higher than the average poverty rate for the commonwealth.
 - The areas have a commercial vacancy rate of 20% or more.
 - The area has a facility of a least 1,000,000 square feet that is abandoned.

Appendix C: Profile of Brownfield Redevelopment Initiative for Kalamazoo, Michigan

US EPA and the Michigan Department of Environmental Quality (MDEQ) provide the following resources and services for the Brownfield Redevelopment Initiative:

- Help to compile relevant, existing environmental information.
- Assistance with environmental liability management (due diligence) process.
- Pursuance of grant sources for phase I and II ESA, base line environmental site assessments and coordinate environmental testing and clean up from state and federal resources.
- Stabilization of salvageable structures or condemnation of those in need of demolition.
- Development of site plans and alternative uses for unoccupied properties.
- Assistance in obtaining PA 198 Tax Abatements for eligible projects.
- Determination of project eligibility for state and federal tax credits.

Tools used to promote the initiative include:

- Informational brochure and a variety of newsletters to assist community businesses and property owners in understanding brownfield redevelopment techniques and options.
- Informational Video about the BRI.
- Several Television Programs to update the community on the progress of the BRI.
- Market Analyses on six priority brownfield sites that examined re-use potential, ease of redevelopment and environmental costs to determine the highest and best yield for each site.
- Completed an Inventory of city-owned brownfield.
- Brownfield sites have been mapped into a Geographic Information System.

Community Outreach Efforts of Kalamazoo

The city of Kalamazoo contracted with the Coalition for Urban Redevelopment (CUR) to provide assistance in its community outreach efforts. CUR:

- Disseminates brownfield information and determines neighborhood concerns through surveys and community meetings
- Aids in developing plans which serve the long range needs of the neighborhoods and community

- Assists with presentations and meetings with the private sector
- Helps in new efforts to inventory privately-owned brownfield sites

Noteworthy Initiatives

- An Employment Training Program is currently under development. It will target residents in the affected areas of brownfield sites. The program will assist with costs employers typically encounter. As an incentive, the city will match 1-to-1 with the employer from a 5% set-aside from brownfield sale proceeds.
- A natural features inventory and development of a habitat protection plan for a 227-acre site.
- A landscape design standards manual is being prepared as a means of enhancing the quality and appearance of Pilot sites. It will be used by prospective developers and city staff in the creation of redevelopment agreements.

Leveraging Other Activities

- A cooperative effort between the city, EPA Region 5 and the MDEQ resulted in the completion of demolition and soil sampling activities at a former metal plating facility. The site is now available for redevelopment.
- Use of the Brownfield Redevelopment Financing Act to create a finance authority to help test and clean up sites and provide brownfield developers with tax credits.
- Per the city's request, EPA Region 5's mobile lab performed soil tests on 5 small gas station sites.
- The MDEQ has contributed over \$5,000,000 toward the city of Kalamazoo's brownfield redevelopment efforts on 6 priority BRI sites. The funds are being used for environmental site assessments, remediation, demolition, site improvements and tax credits.