

RPA

Regional Plan Association

Making Redevelopment Accessible in New Jersey



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New Jersey Metropolitan Brownfields Initiative

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I. Introduction

“More than 20,000 brownfield sites exist in 39 cities across the U.S. These sites cost approximately \$387 million in lost taxes, annually.”

—U.S. Conference of Mayors

In February 1996 Regional Plan Association released *A Region at Risk*, RPA’s Third Regional Plan for the New York-New Jersey-Connecticut Metropolitan Region. The plan and its policy and investment recommendations are based on an in-depth analysis of the rapid changes affecting the Region’s economy, environmental systems and social equity: the “3 E’s.” The plan is also based upon an intensive analysis of urban and regional development policies and plans in other great world centers, including London, Tokyo, Paris and Berlin. From this process it became clear that reclamation of brownfield sites is a focal point of long-term development plans in all of these cities. RPA sees the Region’s vast accumulation of abandoned industrial sites—brownfield sites—as a tremendous potential asset.

The objective of RPA’s Metropolitan Brownfields Initiative is two-fold:

1. To review New Jersey’s experience in reclaiming contaminated sites since the 1993 passage of S-1070: Industrial Sites Recovery Act (ISRA), amended the Environmental Cleanup Responsibility Act (ECRA); and to make recommendations at the state and federal level to further promote and expedite brownfields redevelopment in New Jersey and the Tri-State Metropolitan Region.
2. To assist communities and potential developers in the reclamation of brownfield sites, providing an analysis of techniques and tools that are available to private developers, municipalities and community groups.

In pursuit of these objectives, this report will explore the aftermath since the passage of S-1070 and address two issues: have incentives leveled the playing field, and what other incentives are necessary? For example, how have new brownfields laws affected development projects in the Region? What regulatory reforms should be considered on local, state and federal levels? A Steering Committee was formed to identify and analyze case studies and to suggest alternative policy directions to expedite brownfield development projects.

This report reviews the overall experience with brownfield reclamation in New Jersey subsequent to the enactment of new laws. A second objective was to assess proposed changes to the Spill Act and to provide a forum for debate about the content of those changes. On January 6, 1998, Governor Whitman signed the Brownfields and

Contaminated Site Remediation Act, which addressed many of these issues, particularly with regard to financial incentives and liability protection for “innocent purchasers.” However, provisions that would provide more latitude to developers in choosing remediation standards have raised significant concerns from environmental and community-based organizations. Furthermore, the Committee believes that the act does not sufficiently address a critical issue: it does not provide a planned context for brownfield redevelopment on local and regional levels. This report attempts to begin addressing that omission by demonstrating examples of successful brownfield redevelopment projects which included effective participatory processes and by identifying significant incentives for community involvement.

This research project was funded by a grant from The Fund for New Jersey.

A. *RPA’s History on Brownfield Sites*

Brownfields are former industrial sites, frequently located in close proximity to major transportation nodes and centers of commercial and industrial activity. EPA defines brownfields as “abandoned, idled or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.” Many are owned by the government, including *in rem* properties seized for back taxes, former solid waste facilities, military bases, and ports and terminals.¹ As a result of their former use, some of these sites are contaminated. Rather than deal with the cost, complexity and unpredictability posed by the contamination, businesses forgo opportunities to construct on these urban sites and instead displace agriculture or open space by developing rural or suburban sites known as “greenfields.” In the Tri-State Metropolitan Region, agricultural land declined by 42% from 1964 to 1992. The market preference for “greenfields” development causes unnecessary and expensive infrastructure growth called suburban sprawl, helping to encourage development farther and farther beyond city centers.

There are more than 100,000 leaking underground fuel tanks, spill sites, or former industrial sites included in government registries of known or potential toxic sites in the Region.² In certain cases, these sites may pose a threat to people who live nearby. But many of these sites have limited, if any, contamination problems that pose a significant risk to human health. They are simply eyesores that undercut the viability of urban

¹ *In rem* properties have legal actions or judgments against them.

² Regional Plan Association defines the Tri-State Metropolitan Region as the 31 counties that compose and surround New York City and function as a single region. They encompass southwestern Connecticut, New York City’s five boroughs, Long Island, lower Hudson Valley, and northern New Jersey, including Mercer and Ocean counties. It includes nearly 20 million people and almost 800 cities, towns and villages spread across 13,000 square miles.

communities, limiting their quality of life, property values, and employment opportunities. Making these sites productive once again, either for new industrial activities or other uses, promises to bring new opportunities to urban neighborhoods blighted with derelict land and to clean areas that are being neglected and left to decay. Developers and planners may argue that the markets for urban and suburban properties are distinct and that projects in urban and suburban areas do not complement or substitute for each other. However, RPA's goal in promoting brownfields redevelopment is to provide alternatives to further suburban development on the Region's outer fringes.

In 1991, RPA initiated the Union County Land Recycling project to determine the location and extent of bypassed and contaminated sites in this important industrial area of the Region and the impediments to their reclamation. Union County was chosen because of its concentration of older industrial land and access to transportation systems, which are characteristic of many of the Region's urban areas, making the initiative a replicable case study. The inventory of brownfield sites revealed several important issues. It identified more than 185 sites, totaling over 2,500 acres of re-developable land in the county. One-tenth of this land would be sufficient to accommodate Union County's projected employment growth to the year 2010. The inventory also found that the sites were larger than expected, averaging 14 acres each, and cleaner than expected. More than half of them either do not require cleanup, are now being cleaned-up, or have already been treated and are now available for redevelopment. The study found that costs of developing many of these sites could compare favorably with non-contaminated suburban sites.

Consequently, RPA helped to shape and supported legislation that became the 1993 New Jersey Hazardous Discharge Site Remediation Act (HDSRA) and Industrial Sites Recovery Act (ISRA), which provided for differential clean up standards for residential and non-residential reuse, allowed for on-site restricted "engineering" remedies such as capping, provided a fund for hazardous waste cleanup, and allowed for remedial investigations to proceed without government oversight. Then, to demonstrate the efficacy of these laws, RPA promoted and helped expedite permitting for the \$2.5 million Orion reclamation project on a former landfill on Elizabeth's waterfront, now being developed as a regional retail center. The project generated a public-private task force of community leaders, the developer, and public officials. The presence of this group and the appointment of a state-level case manager gave everyone involved a sense that this was a priority project and helped push state permit applications to the top of the pile. A local coordinator did the same at the local level. As a result, all permits were issued in less than a year—record time.

Based on these experiences and precedents in other world centers, the Third Regional Plan calls for a comprehensive program to reclaim the Region's estimated 50,000 or more brownfield acres of former port and industrial lands and strongly urges that these areas

become focal points for growth in the Region. In order for such sites to be reused, existing owners or prospective purchasers must clean them to meet standards set by state and federal governments. The people who actually created the contamination in the first place are often no longer around to correct the situation, and additional uncertainty may loom over the costs, such as liens or other complications. Health standards may change as medical and technical science advance. Since many of the sites have only been cursorily examined, there is always the possibility that further contamination will turn up once remediation is underway. Worst case scenarios have been driving potential developers away, adding further momentum to the forces of sprawl in the suburbs and decay in the inner-cities. In the issues of brownfields redevelopment, negative perceptions and uncertainty can prove more detrimental than environmental realities.

RPA is now working with all levels of government—from local to federal—to create and implement regulations and incentives to address these issues. In August 1996, RPA went to Washington, DC and met with a seven-member Congressional coordinating committee working to convene a Tri-State Congressional Caucus. Brownfields redevelopment emerged in that meeting as one of the key items that this caucus pursued as an economic development strategy for the Region. RPA has also completed an analysis of New York

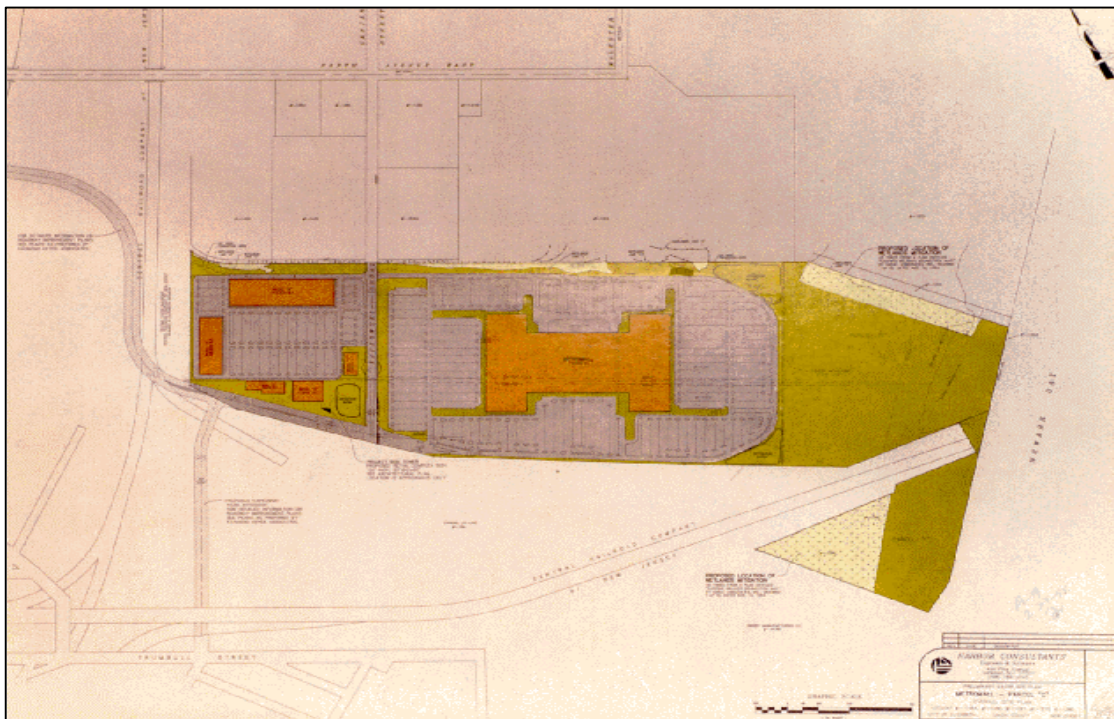


Figure1: Site plan for the \$2.5 million ORION/OENJ reclamation project on Elizabeth's waterfront. RPA facilitated remediation of this site for its Union County Model Site Redevelopment Project.

State's pertinent environmental laws and is participating in a New York City EPA

Brownfields pilot program as a Task Force member. In Newark, RPA chairs the Legislative and Regulatory Reform subcommittee of the Brownfields pilot program. The subcommittee provided commentary on recently enacted changes in state environmental law and is helping implement an “Environmental Opportunity Zone,” whereby businesses may deduct remediation expenses from municipal property taxes.

Brownfields continue to arrest economic development in both urban and rural areas throughout the nation. It is imperative that state and local officials promote the development of these underutilized industrial properties or they will continue to lie fallow. The environmental and economic consequences of thirty years of unmitigated sprawl make it clear that New Jersey must do a better job of rebuilding its urban centers, to provide an alternative to further development on the suburban fringe. Encouraging the reuse of contaminated properties is a key step toward achieving a stronger state economy.

II. Lessons From Case Studies and Targeted Interviews

*“There are contaminated sites listed in all 21 New Jersey counties,
and in 539 of the state’s 567 municipalities.”*

—New Jersey Office of State Planning

The reclamation of brownfield sites is a relatively new phenomenon for regulators, investors, lenders and community groups. Long-term data trends, extensive research statistics and a standard operating procedure do not exist. The most effective mechanisms to become better educated regarding the redevelopment of formerly abandoned or underused sites are through interviews and case studies. For this project, RPA conducted dozens of interviews with professionals in brownfields-related occupations and spoke with owners and developers of former brownfield sites. These interviews and case studies chronicle the lessons learned in both successful and less-than-successful endeavors and contain knowledge, ideas and, perhaps, the beginning of a blueprint for strategic brownfields redevelopment in the Tri-State Metropolitan Region.

A. Three Tiers of Sites

For the purposes of categorization, the Steering Committee suggested that we consider three different tiers of brownfield sites: sites that pose some contamination issues, but are economically viable development projects (“tier one” sites); sites that would be attractive, but have higher contamination risks or less attractive marketability, so they require some types of incentives to move forward (“tier two” sites); and sites that have high environmental risks and do not hold great economic potential even if they were clean, due to poor location, lack of access or unclear reuse potential (“tier three” sites).

- RPA’s interviews indicate that many of the “tier one” sites in the region are moving forward and do not require strategic planning. An important policy issue regarding “tier one” sites is that their redevelopment may not require public incentives and subsidies which should be focused on other sites. Furthermore, their remediation and redevelopment should be consistent with the surrounding community’s zoning and planning.
- The “tier two” sites also hold the potential to move forward under market conditions, if the right level of incentives—tax abatements, public assistance, remediation reimbursement—can be provided. Making these sites attractive for private investment should be the primary objective of financial incentives, essentially bringing them into

the “tier one” category. Once in that category, remediation and redevelopment plans should again be consistent with the surrounding community’s zoning and planning.

- The “tier three” sites will require substantial public investment to move forward. To create a regional strategy for brownfields redevelopment, it is not sufficient to focus solely on sites with significant economic return. “Tier three” sites may, by their location in less-advantaged neighborhoods, lack of access, or other issues, justify considerable public or philanthropic involvement. Public policy and the majority of public investment dollars must concentrate on remediation and redevelopment of sites that pose health risks and deter economic development in lower-income communities throughout the region.

While these three categories are not “hard and fast,” they provide a framework to discuss brownfield sites and to consider appropriate public and private strategies. There are many possible variations on these three tiers. One notable exception to these categories would be corporate sites that are remediated because corporations no longer wish to carry the sites on their books or be exposed to third-party suits. These sites may not have any particular development programs or plans associated with the remediation.

B. Case Study Observations

Interviews and case studies did not produce one standard process for redevelopment of brownfields. Each site had unique components, such as deed restrictions, indemnification, legal procedures, and varying degrees of involvement of federal, state and local officials, as well as community members. But several important lessons emerged from the case study research.

Generally, the case studies revealed that voluntary cleanup programs are successful because their developers or owners were able to remediate and redevelop the site in a streamlined process without community or government opposition. Most of the case studies indicate that when the New Jersey Department of Environmental Protection (NJ DEP) is invited to the table early in the process, the result is a faster remediation process that is less costly and less time consuming. Several respondents noted changes in policy since the early 1990’s that reinforced this trend. In particular, these respondents found that NJ DEP’s willingness to accept cleanup levels that meet industrial standards instead of residential standards has accelerated the cleanup of these sites. The use of innovative technologies and temporary containment processes have also proven beneficial. However, complaints did persist in the case study process. Some respondents felt that NJ DEP and EPA were unwilling to compromise or slow to respond to inquiries or applications. Most significantly, respondents agreed that any delay or lack of clarity by regulatory agencies can pose considerable obstructions to successful projects.

One of the most rewarding benefits of brownfields redevelopment is the potential for financial returns to the community. Whether it is the construction of a performing arts center, retail mall or trucking facility, these projects can return non-performing properties to tax roles, provide employment opportunities in diverse communities, and attend to remediation of contaminated properties.

C. Critical Components of a Successful Brownfields Redevelopment Process

Through the case studies and interviews, the following critical components to successful projects emerged:

1. A Planned Vision

As indicated in the previous section, brownfields redevelopment can be categorized in a three-tier system. But for any tier of project, it is critical that developers, owners, government, community and local business members come together to determine the best use for a site. These stakeholders must know from the onset what are the potential reuse

options, financing mechanisms, levels of environmental contamination, possible remediation methods, and the needs and desires of the local community. When a community becomes involved in a sustained long-term planning project, chances for successful brownfield redevelopment projects are significantly enhanced.

There are many possible benefits from and incentives for redevelopment projects. Urban economic development can be promoted through the cleanup of environmental contamination. Federal, state and local initiatives can provide financial assistance to inventory and evaluate brownfields sites. These funds can be provided to current owners, prospective purchasers and municipalities to facilitate voluntary cleanup actions where traditional lending mechanisms are not available. The seed money involved in the programs can leverage substantial economic investment and benefits, as they have in the Camden case study. And available public-private partnerships, low-interest loan programs, bonding authority and liability protection laws can all be used to assist in the redevelopment, as well as turning properties with “upside-down” value (where the clean



Figure 2: Before redevelopment: an abandoned factory in Germany's Emscher region.

site would still be worth less than the cost of remediation) into assets for the future—if *there is a strong vision*.

2. Predictability in the Redevelopment Process

The issue of reliability and predictability in the redevelopment process is not unique to brownfield sites: it is part and parcel of the urban development landscape. However, adding environmental contamination concerns to the picture can make the approval process only that much more complicated, further encouraging developers to take their investment dollars elsewhere. Brownfields sites add several new layers of unpredictability to the redevelopment process. Issues which can raise cause unpredictability include:

- Time lost waiting for approval of a Remedial Action Work Plan and other governmental procedures.
- Potential liability from third party or other external lawsuits.
- The possibility of obtaining poor results from engineering solutions or finding new contamination at later stages.
- Reopening of remediation due to changes in standards.



Figure 3: After redevelopment: a planned vision can transform sites and historic buildings.

These issues are all being addressed to different degrees. The 1998 Brownfield and Contaminated Site Remediation Act included provisions intended to provide more predictability to the process, including Covenants Not To Sue and liability protection. But communities near brownfield sites may be wary of remediation plans—they may have already found themselves mistreated by the original polluter—and need similar assurances that the process will be predictable and open.

Improving predictability in the brownfields redevelopment process requires the following components:

- A team approach—by NJ DEP, developers, and communities—toward Remedial Action Work Plans and other steps in the process.
- Protections against changes in standards, such as insurance coverage.
- Pre-approved engineering controls and presumptive remedies.
- Some degree of liability protection, particularly for “innocent purchasers.”
- Adherence by regulators to strict timetables for review of applications and permitting.

Many of these issues, such as liability protection for innocent purchasers, are being addressed by legislative changes. However, it will still take time for new legislation to work its way into a coherent process. Other issues, such as addressing future changes in standards, are being discussed both in New Jersey and elsewhere. For example, in Connecticut proposed legislation would provide developers with a Covenant Not To Sue upon completion of remediation, but would also require a payment equaling 3% of a property’s value into a fund to help the State cover unforeseen costs in the event of new standards or discovery of additional contamination. New Jersey now provides for a Covenant Not To Sue without a surcharge, but only for innocent purchasers, not Responsible Parties. Any proposed changes to environmental regulations must hold up against critical analysis, both to ensure that Responsible Parties are not completely exonerated and to ensure that changes will be worth the cost, time and effort that will be required to make them effective.

One planning process demonstrates the importance of predictability to improving chances for a successful redevelopment plan:

In Long Branch, a private organization, Long Branch Tomorrow, prepared a master planning concept that was pre-approved by NJ DEP as meeting the requirements of the Coastal Areas Facility Review Act (CAFRA). This pre-approval (which took three years of negotiation with NJ DEP to secure) ensures that any development project approved by the City automatically receives coastal area regulation approval. In an urban community which had seen an entire decade go by without a single real estate transaction in its downtown, developer interest has surged due to the promise of streamlined CAFRA applications. While other issues were also critical to the success of the Long Branch process, such as the active involvement of the private sector and the quality of the master plan devised by the consultants, this example demonstrates that predictability is a vital component to any urban economic development strategy.

Basic components of unpredictability in any urban redevelopment project—whether site contamination is an issue or not—include steps in the approval process such as the

possibility of community opposition, delay in receiving any required zoning variances and environmental approvals, and implementing extensive infrastructure connections. These issues may make development in any urban area more complicated than in a rural setting, but policy initiatives such as streamlined plans, tax abatements and other economic development strategies can begin to address these complications.

As the Long Branch model demonstrates, making the approval process more predictable makes development sites more attractive and will in the long term help to remediate more sites and provide greater economic, environmental and social benefits for the Region.

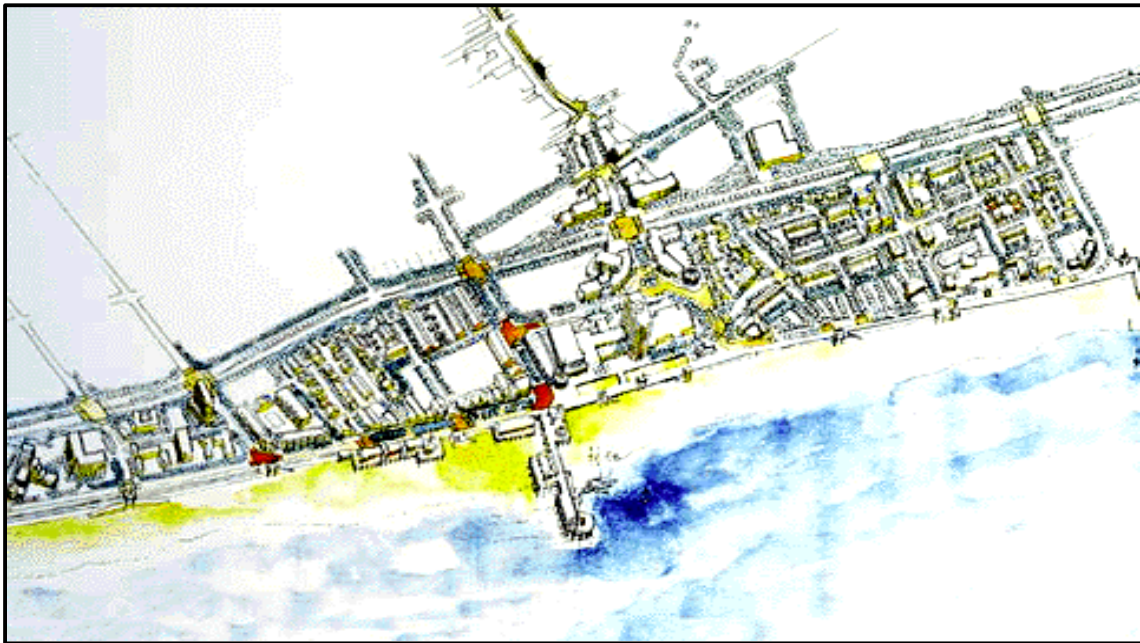


Figure 4: Rendering of Long Branch redevelopment plan. Long Branch has attracted new investment by providing more predictability to the redevelopment process.

3. Early Community Involvement

New Jersey's 1998 brownfields legislation (summarized in the Appendix) addresses many concerns identified by developers during the interview process. The legislation found some common ground between business and environmental advocates on certain issues, including liability reform and financial incentives. However, a missing component of the legislation was the area of community involvement in remediation standards and brownfields redevelopment programs. A provision in the bill regarding choice of remediation techniques left community advocates asking how the law would affect their ability to participate in local redevelopment projects.

From the perspectives of community and environmental organizations, the debate surrounding the new legislation highlighted the absence of successful community involvement in too many brownfield projects. With better public tools becoming available and both community groups and local governments becoming more savvy in their approach to brownfields redevelopment plans, community involvement will only become more critical to success in the future. Responsible Parties throughout the state recognize this, and are changing the way they approach their contaminated sites. Remediation and redevelopment should no longer be perceived as two separate processes, but should be recognized as critically linked in a larger effort to preserve and restore our environment and revitalize our urban areas.

Some organizations believe that legislative changes will be necessary to prevent worst-case scenarios, where polluters proceed with remediation plans that do not address community concerns and may even preclude community redevelopment goals for a site from being met. Others argue that legislation is not necessary, and would apply a “one-size-fits-all” approach that could do more harm than good. Many people interviewed agreed, however, on the need for broader change to improve the community involvement paradigm. Community involvement needs to be re-defined, to include:

- Responsible expectations on the part of community groups and municipalities for what is possible on particular sites.
- Engagement in a long-term process, that sets out ahead of time the vision and planning for a community, rather than waiting for a redevelopment project to stir debate.
- Recognition of the tools that are now available to promote beneficial redevelopment programs, and using those tools effectively.

Cooperation among Federal and State agencies, local community development organizations, current owners, and prospective purchasers is required to accomplish timely response actions and the redevelopment or reuse of brownfield sites. There is a need to provide financial incentives and assistance to inventory and assess sites and facilitate their cleanup. Government, business and community officials agree that there is a need for a program that encourages cleanups of brownfield sites through the capitalization of loan programs.

Examples do exist of successful community participation in redevelopment projects. The Magic Marker project demonstrates that when a community is involved in a redevelopment plan, it has much greater chances of long-term success:

The 7.5-acre Magic Marker site in Trenton is located within a mixed residential neighborhood. From the 1930s to 1980s, the site was used to manufacture batteries. Throughout the 1980s, the site housed the manufacturing plant for Magic Marker and employed up to 200 people. In 1989, Magic Marker filed for bankruptcy, and the site fell into decay and neglect. The surrounding community, organized by Isles, Inc., a community-based organization, focused attention on the site as a major problem for their neighborhood. In a collaborative effort with NJ DEP and the City of Trenton, funds were secured to investigate and remediate the site using an innovative technique to remove lead contamination. A critical aspect of the success of this program was the leadership and advocacy provided by Isles. With strong community involvement from the beginning, barriers and obstacles to brownfields redevelopment were removed before they even surfaced. Each step of the process involved community meetings, and public announcement and newsletters documented the steps being taken. By bringing all the stakeholders into the process and keeping them involved, Isles created a model for community redevelopment for New Jersey and the nation.

Necessary community outreach should include:

- Identify leaders in the community and work with them to keep the process flowing smoothly.
- Hold one-on-one community organizing sessions. Educate people about the remediation process and the environmental and economic issues.
- Conduct training sessions that:
 1. Provide information on contaminated sites.
 2. Inform communities on how to hold meetings, how to recruit and build organizations, and how to organize effective coalitions.
- Solutions to problems which occurs when change occur during the process. Community groups must ensure that some aspects remain consistent, so there is some form of continuity and consistency throughout the process.
- Creating and sticking to a time line so the process proceeds in a timely fashion.

4. Access to Capital

EBA maintains that “no lender should be obligated to or should be pressured to make a brownfields loan that does not meet the normal credit quality standards for similar non-brownfields loans.”

—Environmental Bankers Association

The Environmental Bankers Association (EBA) is an organization comprised primarily of commercial banks with a brownfields perspective, focusing on private sector lending. In calculating risk to lenders, banks maintain that real estate collateral is only part of a credit equation. Commercial lenders will often also require: a credit-worthy borrower, based on a business plan, projections, and history of experience; two or three sources of repayment; and ability to both repay a loan and remediate a property if active cleanup is required. For the final requirement, institutions may demand that remediation costs be covered by the borrower's cash flow, escrows, guarantees, insurance or other financial mechanisms.

Prospective purchasers and developers are reluctant to participate in transactions involving these properties because of the concern of the potential environmental liability. While the contamination itself might pose no direct threat to the business or to human health and the environment, the potential for litigation, government liens, and loss of revenue associated with contaminated sites drives industrial sitings from brownfields to greenfields. This reduces economic opportunity for people living in urban areas. Government must encourage brownfields development through grants, revolving loan programs and other financial incentives.

There are several New Jersey State programs and legislation described in this report, such as the Hazardous Discharge Site Remediation Program, the New Jersey Redevelopment Authority, Environmental Opportunity Zones, and reimbursement of developers' costs for remediation. (See Appendix for a more detailed listing.) Federal incentives in this area also include:

- The Federal Taxpayer Relief Act (HR 2014/PL 105-34), a new tax incentive to spur the cleanup and redevelopment of brownfields in distressed urban and rural areas.
- The Environmental Protection Agency (EPA) funding \$125 million for assessment, cleanup, state cleanup programs and job training.
- The Department of Housing and Urban Development (HUD) providing \$155 million in community development and housing support and an additional \$165 million in loan guarantees.
- HUD also provides Community Development Block Grants (CDBG) to communities throughout the country to carry out locally designed community and economic development projects. Grantees (States and local governments) may use CDBG funds to support the reclamation and reuse of urban brownfields sites to revitalize their communities.
- The Department of Transportation (DOT) funding of \$4.2 million for sustainable transportation addressing brownfields issues.

D. Obstacles to Brownfields Redevelopment

Through research and case study analysis, one factor in the redevelopment of brownfield sites is clear: there is no one standard procedure for redeveloping brownfield sites. Each site has unique components, which may include deed restrictions, indemnification, legal procedures, type and level of contamination, reuse options, and several other ingredients. Although New Jersey has arguably some of the nation's most progressive legislation, barriers to redevelopment remain. This report provides an overview of several successful brownfields redevelopment projects. Each of the case studies addresses a unique type of site and reuse option. In addition to the case studies, RPA interviewed practitioners in the brownfields arena about their views on the redevelopment process. These interviews showed that the major perceived obstacles to brownfields redevelopment include:

- **Timing:** Developers argue that regulators often impede the construction process and their response time is poor. By going to NJ DEP and other agencies early in the redevelopment process, developers are better able to control time spent and regulatory costs. If NJ DEP responses are predictable, developers can save both time and money.
- **Location, location, location:** Once contamination is addressed, brownfields projects become real estate deals, which often hinge on location of market, suppliers, and infrastructure.
- **Liability:** Liability can take many forms, and places extra burdens on buyers, sellers, lenders, attorneys, public agencies and communities.
- **Complexity:** Unclear—or even contradictory—rules about land use and site remediation can place developers in “Catch-22” situations. By adding additional layers to the permitting process, brownfields projects can exponentially increase in complexity.
- **Competing expectations:** Developers can find themselves up against community expectations for a site that they find unrealistic, such as local groups hoping that no development at all will occur. Even worse, when a community's expectations conflict with a municipality's master plan, the developer may have to negotiate *between* several groups, rather than *with* them.
- **Lack of Trust:** If a community, including elected and appointed officials and community leaders and activists, does not believe that a developer is being honest and fully disclosing information, the project will likely fail.

1. Private Sector Obstacles

From the perspective of property owners and developers, the case studies and interviews identified two areas that pose significant obstacles to brownfield redevelopment projects: liability and remediation costs. These issues may be considered developers' primary

concerns with brownfield sites. Once liability and remediation issues are addressed, a project is, from the developer's point of view, simply another urban redevelopment project.

a) Joint and Several Liability

Valuable urban land sits idle because fears of liability costs scare off potential developers, businesses and banks. In addition to the normal hurdles involved in redevelopment efforts, public and private entities seeking to redevelop these sites find that contamination often makes the business and financial communities very reluctant to invest in these areas.

Liability becomes a particular concern for large corporations (and responsible parties to contamination) due to the lack of finality for remediation. Current owners may continue to have liability for contamination that is left on site even after a property is sold. This concern extends to the potential for third party lawsuits. This lack of finality has been described as a two-edged sword, providing the public with legal protection, but also impeding the remediation of some contaminated sites which might otherwise be cleaned up. Although toxic liability laws have, in most instances, protected human health and the environment, another consequence is that these laws place an additional obstacle in the path of urban revitalization. Prospective purchasers and developers have been reluctant to participate in transactions involving these properties because of their concern regarding liability, which could be avoided by investing in development projects on clean sites.

While liability—and particularly New Jersey's policy of making polluters pay to clean sites—must not be relaxed to the point of letting responsible parties avoid their obligations, efforts have been made to provide clarity and protections that encourage remediation and redevelopment.

b) Remediation Costs and Standards

Many case study participants noted improvements in the remediation process and resulting cost reductions. Progress is being made, as criteria are developed and timetables are established. However, developers argue that with new technology for site remediation, variable standards and Risk-Based Corrective Action (RBCA), the process can still be made more efficient and effective. They maintain that the remediation process still requires implementation of more clearly defined standards. While NJ DEP has been instructed by the New Jersey legislature to provide these standards, some industry critics argue that they have been slow to implement the changes.

On the other hand, environmental groups are very concerned that the qualitative criteria necessary to implement major risk-based corrective action reforms simply do not exist, and express strong reservations about the ability of RBCA approaches to deal with other

issues, such as water quality standards, natural resource damages, and long-term effects of contamination.

2. Public Sector Obstacles

From the perspective of government and community groups, the two primary obstacles to guiding the successful redevelopment of brownfield projects are a lack of technical expertise and a lack of community vision. Without expertise or vision, a community is left in a reactive mode, leaning on the private sector to provide both the questions and the answers to complex issues that, once resolved, will leave their mark on a community for generations to come.

a) Lacking Technical Expertise

Reforms over the last several years (summarized in later sections of this report) have dramatically changed the manner in which local communities can become involved in the brownfields redevelopment process. Rather than watching as bystanders, communities can be active participants—even the driving force—in redevelopment projects. Through new powers of condemnation, financial assistance for investigations and remedial activities, tax abatements and other incentives to leverage private investment, communities can proactively engage in redeveloping their brownfield sites.

But with these tools has come increased complexity. Municipalities often lack the technical expertise to make the best use of these incentives. The New Jersey Economic Development Authority can provide needed assistance, but recognizes that their resources are also limited. In particular, EDA focuses on larger projects with state-wide benefits, while the types of projects that can be identified and completed on a community level often fall outside the EDA radar. Several people interviewed as part of this initiative have cited the need to educate municipal governments about how they can package public incentives to market sites to developers. Local government must be an active participant in the process; they cannot assume that clean sites will automatically attract developers. As with all real estate, marketability and location are key elements. Or, as another interviewee said, “it’s still real estate we’re talking about—the rules haven’t changed.”

A major obstacle to brownfield redevelopment is finding mechanisms to provide the necessary expertise to local communities, to assist smaller municipalities and community-based organizations. Within this area, site valuation itself poses another major obstacle.

(1) Site Valuation

Many brownfield sites become public property through involuntary tax foreclosure or other processes. In other cases, city agencies or other public entities may voluntarily acquire properties for redevelopment purposes, or they may be the responsible party

which created the contamination. To return these sites to productive use, municipalities often try to return them to private hands, to encourage private investment and economic development.

In the past, when brownfield sites posed greater unknown risks, municipalities were often inclined to give the property to a private developer willing to tackle the obstacles posed by site remediation and redevelopment. But things have changed. Now, municipalities and innocent purchasers may be shielded from certain kinds of liability, reducing the risk of obtaining and redeveloping a site. And financial incentives in the form of tax abatements or grants for site investigations also make these sites more attractive investment opportunities. Municipalities have found themselves in the enviable position of owning land that has real redevelopment potential, and having more than one private investor willing to take on the difficulties of redevelopment.

With these advantages, however, have come new challenges. In particular, different cities and agencies have different processes for returning land to private hands. Real estate appraisers have problems quantifying the value of property where the cost of cleanup remains unknown. Auctions may provide quick cash for sites, but will they lead to the best use? Request for Proposal (RFP's) can help a city identify beneficial uses for a site, but the process can be cumbersome and unpredictable—the bane of brownfields redevelopment projects—if the city does not have a vision for the site. Cities may be pressed to choose between a) a process that identifies the highest offer for the site and b) a process that would identify proposals that offer the greatest long-term public benefit.

The City of Newark has grappled with these issues, as different processes for valuing and selling city-owned brownfield sites are considered and debated by the Office of Development, the Newark Housing Authority, and the Newark Economic Development Corporation. This debate and disagreement itself can pose an obstacle to brownfields redevelopment, where perception can be more important than reality. A lack of coordinated procedures and planning for these transactions, real or perceived, can send a message to the real estate development and investing community that this will be a more complicated (and expensive) place to do business. In Newark, a potential brownfields developer has sued the City over the selection of a different developer for a site. Over a year later, redevelopment still has not begun as the litigation is worked out in court. Municipalities must have clear processes for transferring public sites to private investors to avoid these pitfalls.

(a) Auctions: Pros and Cons

In October 1997, the Newark Housing Authority auctioned six vacant brownfields properties, ranging in size from .5 acres to 6.55 acres. The auctions' conditions included a statement that all purchasers take title to the properties on an "as is, where is" basis and

agree to indemnify and hold harmless the Housing Authority with respect to all liability related to any environmental matters arising from sale and ownership of the properties. Buyers were prohibited from conveying the property for two years, unless a new structure is constructed on the vacant lot. The Housing Authority found the process very successful: all the industrial sites received bids, and winning bids on the properties totaled 300% of the total of the six minimum prices set in advance for the properties.

The advantages of the auction approach include:

- With a minimum of complication, the market determines the value of the property.
- The highest responsible bidder is awarded ownership and development rights to a site, maximizing short-term revenue to the seller.

The disadvantages of the auction approach include:

- No evaluation of long-term impacts, benefits and costs of bidders' proposals.
- Community vision for sites is minimized.
- Absence of negotiations on terms or conditions of sale can freeze interest of potential buyers who cannot accept auction terms.

(b) Request for Proposals: Pros and Cons

A more detailed evaluation process may be appropriate for sites where the community has a strong stake in the future redevelopment and wishes to retain its right to shape the uses, design and program for a site. For these situations, municipalities may choose to issue a Request for Proposals (RFP) for developers to enter negotiations regarding a site, its disposition, and future use. The basic components of such a process would be:

- Identify an estimated site value through a standard appraisal process, assuming no contamination. This could be achieved through a market analysis comparing the site to other local sites. At this point in the process, a community may also designate its most desired future use for the site, to reach a “fair” price based on this identified use.
- Deduct from this value the estimated cost of remediation, taking into account the following factors:
 - ⇒ The possibility of designation as an Environmental Opportunity Zone site, which would reduce the cost of remediation (see Appendix).
 - ⇒ The possibility of future liability risks, quantified by the cost of insurance for the site, which would add to the cost of remediation.
 - ⇒ The possibility of costs related to other liability risks, such as third party claims, which would add to the cost of remediation.

By adding up the costs and discounts of addressing liability risks and remediation expenses, the municipality would determine a fair price for selling the site to a private investor.

The greatest advantage to this process is that it allows the municipality to determine what types of uses would benefit the surrounding community and assess the feasibility of those uses. If a city is willing to discount the cost of purchasing a site in order to see a more desirable long term use, this process would be prudent. When comparing different proposals for a site, the municipality should include anticipated development benefits—jobs, community improvements, infrastructure investments—in the scoring system. Other advantages include the possibility of pre-approving certain incentives for a site, such as designation of Environmental Opportunity Zone benefits, which help make the redevelopment process less expensive and more predictable for investors.

The disadvantages of this process accrue from the complication of the technique. The valuation requires a basic market analysis, completion of investigations to determine the nature and extent of contamination, identification of possible remediation techniques (which may be funded in part through the State Hazardous Discharge Site Remediation Fund), and economic development analysis to gauge optimal uses for the site and the costs of addressing liability issues. For a site with little economic value, it may not make sense for a municipality to invest the time and energy required by such a process. And the process itself, if not implemented expeditiously, could further add to delays.

Municipalities need to implement a set of standard procedures for the assessment and disposition of brownfield sites that they own. Presenting a predictable process to the development and investing community will help make those cities a more attractive investment.

Municipalities must determine for each site which objective they value more: to gain the highest economic return on the purchase, or to ensure a redevelopment plan that meets community or municipal goals for a site. If immediate economic return is paramount, the municipality can auction the site, understanding that it has less control over what the eventual buyer will do with the site. If the redevelopment of a site poses greater issues, the municipality may choose to forfeit the greatest sales price and be willing to undergo a more extensive valuation process to reach agreement with a developer willing to pursue its objectives. Whichever course is chosen, it must be followed with clarity and promptness.

b) Lacking Community Vision

At some point in dealing with contamination and site remediation issues, brownfields issues give way to the larger set of obstacles facing redevelopment and economic development initiatives in any urban area. The specific snags in the urban real estate field—complicated zoning and approvals processes that can reach for contradictory goals,

political intervention that can sidetrack worthy ideas, and competing visions for contested terrain from private, public and outside actors—are all compounded when site contamination is also an issue. However, the lack of a community vision for a site—or a town, city, or region—can be the most fatal flaw. When so many extra actors need to become part of the dialogue and process for moving land back to productive uses, a clearly articulated vision about the future of an area becomes even more important. What types of jobs do we expect? What types of commercial, residential, and recreational opportunities? Are we precluding any existing stakeholders from participating in our vision, or are we counting on the participation of absent groups that are unlikely to join us? Are our visions both high enough -- so that we can be proud of our aspirations -- and yet achievable?

In recent years, planners have discovered new techniques for helping guide and inform debate to help foster community vision. Visualization techniques borrowed from the film industry allow us to view alternative build-out scenarios. Other planners specialize in surveys to record community responses to different images shown in slide presentations. But these techniques depend on an active, engaged citizenry, with the resources, staying power and commitment to follow their long-term goals. Without these essential ingredients, the new planning tools are simply empty promises.

III. Case Studies

*“Brownfields redevelopment projects are like snowflakes:
no two brownfield sites are ever exactly alike.”*

—Steve Noble, Kemper Environmental

Beginning in 1997, RPA set out to identify case studies of brownfield redevelopment projects with the goal of examining the successes and failures of the existing regulatory structures and other mechanisms that comprise the brownfields redevelopment arena. Case study examples were used to highlight specific issues related to the brownfields redevelopment process. RPA did not intend for this process to contrast and compare case studies, but rather to demonstrate where barriers to redevelopment were found and what existing tools proved useful .

The studies presented here reflect factual information gathered from case study files and the perspective of the developers. Members of the RPA Metropolitan Brownfields Task Force, which draws membership from business, government and non-profit sectors, were provided with the opportunity to review and revise the case studies. The observations do not necessarily reflect the views of RPA or individual Metropolitan Brownfields Initiative members, but present the opinions of developers who have negotiated the redevelopment process. The information collected provides illumination of the obstacles and incentives to brownfields redevelopment.

The methodology for the case studies included:

- Collecting case studies to examine the stages of redevelopment.

RPA provided a written survey mechanism. Those companies that responded to the written survey were then asked to participate in a one-on-one interview. An RPA staff member conducted the interview either in person or by telephone.

- Survey the current sources of funding available for brownfields redevelopment.

In light of current and proposed brownfields legislative and regulatory reforms, RPA analyzed mechanisms that promote brownfields redevelopment in New Jersey. RPA asked participants to identify those mechanisms that proved to be most helpful for their purposes. We found that each developer used a different method of funding. Consequently no single mechanism was identified as the most effective tool.

- Identify the extent to which government subsidies and incentives are used to promote development projects.

The case studies available for this report do not fully address the issue of government incentives. Most projects did not take advantage of available grant programs, loans, tax increment financing and other tax- related incentives, public infrastructure investment or other aid instruments.

A. *Portside Terminal Development, Jersey City*

1. Overview

The Portside Terminal has been a fixture in Jersey City since the early 1900's. Located in a prime location that borders the Morris Canal, the site has been home to a variety of companies from an oil storage depot to a sugar processor. In 1986, the owners began the process of developing the Terminal into residential condominiums. After several years of starts and stops, two 30-story high end apartment towers came on the market. Through the New Jersey State Voluntary Cleanup Program (VCP), the site was remediated for petroleum hydrocarbons (PHC) and other contaminants. Today, the site is a thriving condominium community surrounded by other new real estate development.

2. Remediation

Beginning in 1920, the Portside Terminal, located on the border of the Morris Canal and the corner of Warren, Dewey and Washington Streets in Jersey City, has been an integral part of the community. The site was previously a sugar factory, a textile mill and a bulk oil terminal for ships. Previous owners included McConnell Fuel Oil, Dummer's Glass Works, Adirondac Steel Works, and Matthiessen & Weicher's Sugar Factory. The previous uses convinced the owners to conclude that some of the contamination would be petroleum-based due to the oil storage and glass manufacturing. Furthermore, the owners were looking to determine what effect, if any, the close proximity to the water would produce. They checked to determine if contamination had migrated from their site or if the Canal brought any toxins onto the site.

A portion of the 5.5-acre site had been used for the transfer of marine fuels. The site was decommissioned in 1986 and had ten above-ground storage tanks with a total storage capacity of ten million gallons. Other remedial issues included concentrated areas of contaminated soil and free product. The low level of required cleanup made the Portside Terminal an ideal candidate for NJ DEP's Voluntary Cleanup Plan (VCP).

In August 1993 the property owners, DeMatteis/Waterview Associates, filed a Memorandum of Agreement (MOA) with the New Jersey Department of Environmental Protection to remediate the Portside Terminal. The ten above-ground storage tanks were removed in 1989, along with the fuel transfer depot, by the previous owners. In light of the preceding use of the site, DeMatteis/Waterview focused on the potential ground water

contamination. They installed monitoring wells to define the water table elevation, groundwater flow direction, and dissolved contaminant concentrations. The second step was to develop a system of groundwater remediation based on the monitoring well devices. This salvage was designed in conjunction with a free product recovery system, a remediation procedure that removes hazardous contaminants from the groundwater. The 1993 cleanup was conducted during the excavation and building process. This proved to be an excellent mechanism for obtaining additional samples from the newly excavated land.

The adjoining site had been remediated under ECRA regulations. ECRA/ISRA were not triggered for the Portside Terminal. The site was privately developed and therefore had no community or government involvement, except for signing the MOU with NJ DEP and municipal land use approvals. No figures are available for remediation expenses.

3. Observation and Analysis

In this instance, NJ DEP's Voluntary Cleanup Program (VCP) worked well, particularly in light of the previous owners' involvement. This site was unique in that proximity to the Morris Canal or other groundwater issues did not create greater problems. The location of the site—on the water with a spectacular view of Manhattan—made this a “tier one” site. With parking facilities and public transportation being easily accessible, this site is attractive to all age groups. This developer did not need to rely on any government incentive programs: he knew that with an intelligent redevelopment plan, he would recoup his investment as well as make a profit. Through the VCP, the developer succeeded in meeting these objectives.

This case study demonstrates that historical contamination does not need to prevent the redevelopment of industrial sites. In particular, waterfront properties which were once used for industrial purposes can be successfully redeveloped for other purposes, including residential projects.

B. Metal Refinery at Bridgeview Management Corporation, Perth Amboy

1. Overview

The metal refinery at Perth Amboy was built in 1897 on a former wetland. Poor quality fill and use as a non-ferrous metals facility affected the shallow aquifer over the years. The site was closed in 1978 by a private corporation for economic reasons, and the new owners constructed a semi-industrial park. In 1983, the owner became aware of the environmental liabilities and regulations and determined to sell the land rather than address the pertinent issues. A rescission of sale reverted title to the original owner which subsequently entered into a Memorandum of Agreement with NJ DEP. Since 1991,

several portions of the property have been leased and currently host 17 industrial facilities. The owners implemented a cleanup program that allowed them to contain pollution until tenants could be located. Once the entire property has been developed, the cleanup will be completed. Currently, the metal refinery is a site that is being developed for economic reuse. As of late 1997, approximately 25% of the site had been leased.

2. Remediation

The types of contamination are metals commonly associated with non-ferrous refining and handling. The environmental investigation began with boring samples and establishment of monitoring wells. Previous samples along with the most recent sample/analysis results were adequate to characterize the site due to the predictability of the condition. The remediation began with conventional boring wells; no other types of remediation monitoring were required due to the predictability of the condition. Much of the site was capped. The capping methods chosen were determined not solely on an environmental basis, but also in terms of maximizing the site's reuse value. Within this scenario, the owners were careful to assure protection of human health and the environment.

The schedule to complete clean-up, which began in 1991, is linked to the economic success of marketing the reuse of the site. The owner used an inexpensive, non-permanent capping method known as paving with road millings. This technology—an interim measure—cost less than permanent capping at \$0.20 per square foot. By using an intermediary system, the owner can keep costs down, while remaining in compliance with relevant environmental laws. As the site is developed, a more costly, permanent capping occurs. As the site nears completion, the rebuilding of infrastructure becomes critical, such as roads, sewer lines, and fire lines. The cost of the final solution will be based upon tenant requirements and drives the amount of rent to be charged. Bridgeview Management Corporation projects will determine the final permanent solution to be in place by 2002.

The owner is subject to all applicable environmental laws. However, because the court-ordered recision of sale reverted to the first sale which was pre-ECRA, neither ECRA nor ISRA laws were triggered by the transaction. The site is being remediated through a Memorandum of Agreement (MOA) between the New Jersey Department of Environmental Protection (NJ DEP) and the current owner.

The reuse has been successful because the parent company, as is common for many Fortune 500 companies, would rather develop the property than attempt to sell it in the current regulatory atmosphere.

3. Observation and Analysis

According to Bridgeview Management Corporation, a major contribution to development was the NJ DEP's acceptance of redevelopment as the remediation progressed. Allowing

flexibility for developers to pursue remediation process as part of redevelopment process is something this corporation believes should be further encouraged. No financial aid was requested and no local, state or federal government assistance was sought for the project. As was the case for the Portside Terminal case study, Bridgeview Management had enough statistical data to be confident that the site was a good economic investment, thus had no need to pursue government funding.

This case study demonstrates the benefits gained from addressing remediation and redevelopment in an integrated manner. Savvy developers who successfully combine the processes are able to remediate properties and create economic development on sites that would have been left vacant or contaminated several years ago.

C. Industrial Site, Newark

1. Overview

In 1985, a local tool manufacturing company closed a production plant. The company was determined to remediate and redevelop the six-acre site to make it suitable for sale or lease. This 80-year old site was subject first to ECRA and after 1993 to ISRA. The site remediation was completed in 1997 and the former manufacturing location is currently available for sale.

2. Remediation

A manufacturing facility in Newark closed in 1985. The company was required to remediate first through ECRA and then ISRA. The major areas of environmental pollution were contaminated soil, free floating petroleum on groundwater, and volatile organic compounds (VOC's) in the groundwater.

The environmental consulting firm that was retained by the manufacturing company, obtained NJ DEP approval of an in-place soil capping plan to be used instead of excavation and disposal. The capping plan included the recycling of contaminated soils through cold-batch asphaltting. The site was capped by six- to twelve inches of recycled soils and asphalt, which made it suitable for a variety of industrial uses. Capping soils in place eliminated liabilities and risk associated with transporting contaminated materials off-site. It also reduced remediation costs by over \$1 million.

Within 30 days of beginning the project, the developer obtained NJ DEP approval for a cleanup technique involving installation of free-product recovery wells, instead of a passive recovery trench which had been previously proposed. This technique saved the client over \$300,000 in initial costs. The recovery wells were installed and operational 30 days after NJ DEP approval.

To address NJ DEP concerns regarding dissolved contaminants in groundwater, the developer negotiated requirements for groundwater cleanup. These negotiated requirements are expected to save the client an additional \$1 millions in remediation costs, compared to earlier estimates.

3. Observation and Analysis

Although the developer did not use the Voluntary Cleanup Program (VCP) for this project, they feel that if possible, companies should remediate their sites through the VCP. In particular, they felt that ISRA could have been a more costly and laborious process for this site, although NJ DEP says that there is no difference between an ISRA site and an MOA site in regards to application of standards and cost involved with remedial activities.

While the state encourages redevelopment through incentive programs, the respondents felt that this good-will can be squandered by the difficult experience of working with NJ DEP regarding technical requirements and groundwater. In this instance, the developer relied heavily on the environmental consulting firm. This firm had an established relationship with NJ DEP and was able to work within the system. But not everyone has access to these resources. Some involved in the project felt that NJ DEP had poor communication and top-down coordination and urged for changes in requirements and the “NJ DEP culture.”

From RPA’s perspective, the case study demonstrates that flexibility can be found in the permitting system, particularly if developers understand NJ DEP’s concerns and objectives. This project identified remediation techniques—capping and recovery wells—that were significantly less expensive than initially-proposed techniques, but still met NJ DEP’s requirements.

D. Blockbuster-Sony Music Entertainment Centre, Camden

1. Overview

As part of the Third Master Plan for Camden County, it was determined that a performance center would enhance future economic and social development. The New Jersey State Treasurer’s Office instituted a public-private partnership whereby a 12-acre plot of formerly industrial land that included warehouses and open storage area was remediated and redeveloped into an entertainment center that included a year round concert/theatrical facility, associated site amenities, and a fantastic view of the harbor.

This public-private partnership allowed the cleanup to proceed on a fast track schedule, thus permitting accelerated reuse of the site.

Figure 6: Sony-Blockbuster arena during an outdoor concert.



2. Remediation

Camden County, the poorest county in New Jersey, is home to the fourth largest city in the State. According to the Master Plan prepared by the County, Camden, situated on the scenic Camden Harbor across the Delaware River from Philadelphia, was an excellent site for a South Jersey Performing Arts Center. The City, in conjunction with Pavilion Partners (owned by Blockbuster Video, Sony Music and PACE Entertainment) and the New Jersey Economic Development Authority brought together the Department of Housing and Urban Development, the Casino Reinvestment Development Authority (CRDA), the New Jersey Department of Environmental Protection, Treasury Department, and the Camden County Improvement Authority to develop the waterfront property. The public entities financed nearly 50% of the development and the remaining costs were covered by private investors. The previous owner of the site, South Jersey Port Corporation, is a state corporation. Therefore, selling the site to the New Jersey Economic Development Authority was a state-to-state transaction.

At the time of this transaction, the land was being used as warehousing and open storage. Former land uses such as a rail yard maintenance operation, residues from urban historic fill and river-dredging, and on-site incineration raised the most suspicion concerning potential contamination. The environmental history of the site was difficult to surmise, although an initial PA/SI and RI/RA identified eight areas that were deemed necessary for soil excavation and disposal off-site. The main pollutants on the site were heavy metals. The remaining non-hazardous contamination was contained and capped using standard methods. Groundwater monitoring was implemented and coordinated with NJ DEP to assure protection of human health and the environment. Site remediation, removal of illegal fill, and shoreline re-stabilization cost \$3.5 million.

The principal method of cleanup was traditional remediation methods. Because of the close cooperation among all the entities involved, the cleanup was able to proceed prior to signing the Memorandum of Agreement. This relationship allowed the cleanup to be completed in less than one year, and the remediation moved forward efficiently. As the state took responsibility for the remediation, the private investors were able to assemble the necessary financing.

The site, which was constructed in record time, continues to be owned by the EDA, and Pavilion Partners has a long term lease. There were more than 35 agreements signed between the public and private partners, excluding professional service contracts.

3. Observation and Analysis

Two years after construction began, 500 seasonal and 15 full time jobs, (90% held by Camden County residents), with a total payroll of \$1.7 million were created. The facility accommodates 25,000 seats, (7,000 covered seats and 18,000 on-lawn seats) and contains the South Jersey Performing Arts Center as a tenant. The facility was completed with a \$56 million development budget, of which Pavilion paid \$31 million and the public entities paid \$25 million. A modest ticket surcharge is levied on patrons to finance the project's Payment-In-Lieu-Taxes. The county anticipates that \$23 million over 30 years will be earmarked for the City.

This public-private partnership is positive proof of how government can work with industry to create both jobs and quality of life improvements for targeted communities. In this case, both corporations and communities benefited. This is a do-able blueprint that may be duplicated around the state, and perhaps the country.

At the same time, this type of project, with significant public investment and involvement, provides a solution only for those sites which can justify the public commitment. The New Jersey Economic Development Authority does not have the resources to commit itself to every community in this manner. Camden's situation, as a major urban area in need of substantial investment, justified the additional resources. For smaller communities, the key will be to identify programs and incentives that can be locally-applied, and to work these incentives into their own planning programs. As this case study demonstrates, modest public investment can leverage far greater private resources and direct them to beneficial projects. But the planning for these projects cannot always come from a state agency or outside help. Communities have the tools to pursue these projects, and should seek to take advantage of them.

E. The Orion Project/OENJ MetroMall Project, Elizabeth

1. Overview

On 166 acres nearby the IKEA Furniture Store in Elizabeth, a Danish company is developing a site for a retail mall use, including creation of ten acres of tidal wetland that will comprise the largest contiguous wildlife habitat in the area. The project site is a former municipal solid waste landfill selected by state and local economic development authorities as a model for the redevelopment of brownfields land in the urban New Jersey region.

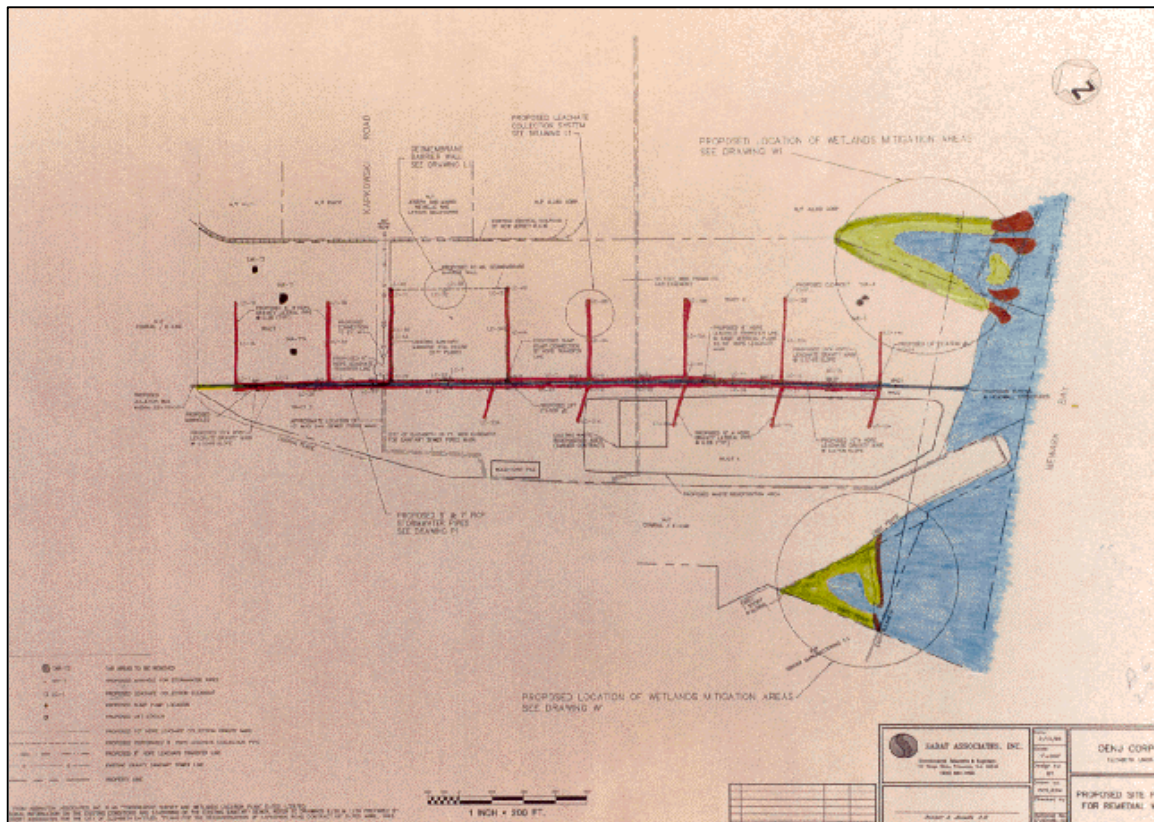


Figure 7: Site plan for OENJ/ORION wetlands mitigation areas.

This privately-owned waterfront land has capitalized on new technologies using dredged sediment from the Port of Newark. A consortium of companies excavates the dredged material, mixes it with a substance that stabilizes any contaminants in the material, and places the material on site as a foundation for redevelopment. Since the developer is paid to accept the dredged material, this saves on costs of purchasing and transporting

alternative fill sources, thereby contributing to the overall economic viability of the brownfields redevelopment.

2. Remediation

Between 1952 and 1972, the site was used by numerous owners for disposal of solid waste generated in and around Union County. In 1987, the former landfill was declared blighted by the City Council of Elizabeth. The OENJ Corporation acquired the land from a Dutch landholder in 1992. A major characteristic of the site is the “Great Ditch” a 60-foot wide, 4,800-foot long trench that bisects the property from west to east, providing drainage from the City of Elizabeth into Newark Bay. This ditch had been considered an obstacle to redevelopment. Additional barriers to development included: no southern egress/ingress, lack of sewer and water, and adjacent sites are government- owned and used for surface storage. Site contamination was not a primary concern.

The land was considered appealing for prospective development because of its critical location and the absence of significant environmental contamination. The site is adjacent to the popular furniture store IKEA, is visible from the New Jersey Turnpike, and is near Port Elizabeth, Newark Bay and Newark Airport.

In 1992, a task force was convened by RPA that included Regional Plan Association, Office of the Mayor and Department of Policy & Planning of the City of Elizabeth, New Jersey Economic Development Authority, New Jersey Department of Environmental Protection, New Jersey Department of Transportation, OENJ Corporation, Union County Economic Development Corporation, and several real estate, environmental, planning and legal firms. This task force was charged with streamlining the reuse and environmental permitting and site redevelopment process. One main goal of the task force was to determine the most feasible approach to addressing environmental issues, such as permitting, wetlands mitigation and environmental monitoring.

The preliminary site assessment and site investigation (PA/SI) found five hot spots (PCBs), which led to the removal of 2,000 cubic yards of soil. The redevelopment process necessitated the closing of the landfill and collecting and treating the leachate that drains into Newark Bay. The site will be developed into two retail areas of 1.2 million square feet (130 acres) and 300,000 square feet (30 acres) that will include ten acres of tidal wetland created on the Bay. The mall is projected to be completed in 1999.

In addition to the expected Urban Enterprise Zone sales tax revenues which will be returned to the City, the OENJ site plan will increase property tax revenue in Elizabeth from \$200,000 a year to \$600,000 a year during the cleanup phase and upwards of \$3.6

million a year when the site is completed.¹ This tax is approximately 2% of construction costs. The development will create 1,700 temporary construction jobs and 5,000 permanent jobs.

The project is being funded by both the developer (\$2.7 million) and the NJ DOT (\$4.3 million) for the \$6 million for construction of a road. The developer also received a \$3 million loan (\$1 million a year over three years) through the Hazardous Discharge Site Remediation Fund to complete remediation activities and assist in closing the landfill. The NJ EDA will be issuing infrastructure improvement bonds of approximately \$180 million on behalf of the City of Elizabeth for this project.

a) Planning and Permitting

An important aspect of the redevelopment of this site was the environmental permitting. In the interest of identifying mechanisms for streamlining the remediation process, OENJ agreed to participate in an RPA-convened task force that included key technical and policy administrators who met monthly to review the progress of the environmental permitting process. Although the Task Force was able to move the process along smoothly, some delays occurred. Initially, NJ DEP anticipated that all permits would be issued eight months after receipt of the application. Instead, permit approvals were issued within 12 months, which is a positive outcome considering that the expected permit approval period for a project of this magnitude is approximately three years. In another situation, a decision to apply for a GP-4 (or General Permit application) helped to speed the permit review process. A GP-4 wetland permit for remedial work allowed a different level of agency review than that needed for an individual approval. Under the GP-4, an applicant need not provide a feasible alternative to a proposed action, but may simply proceed with the remediation.

OENJ also entered into a Memorandum of Agreement (MOA) with NJ DEP for the cleanup of the property. This privately-owned waterfront land will capitalize on new technologies that use approximately 2 million cubic yards of structural and peripheral fill from the Port of Newark as part of the overall development. A consortium of companies received financial compensation from the Port Authority for removing the contaminated dredge and concocting a concrete-like substance that stabilizes the toxins and creates excellent foundation materials. In this instance, the developer is compensated for removing the contaminated sludge and is able to save on the purchase of fill materials by using the newly remediated dredge component in construction.

¹The Urban Enterprise Zone allows businesses located within it to charge a reduced 3% sales tax rate, to encourage retail activity. Furthermore, funds raised by the tax in the UEZ are returned directly to the municipality, rather than general state coffers.

(1) Project Costs:

In summary, OENJ acquired the 166-acres for \$10 million, or \$1.38 per square foot. The remediation costs did not exceed \$20.5 million, including \$1 million for removing the hot-spots, \$2.2 million for the installation of the leachate collection system, \$2.7 million for the piping of the Great Ditch, \$100,000 to install a gas venting system, \$2.9 million for implementing environmental/wetland mitigation, and \$11.6 million for covering and capping the site. The total pre-development cost of the site was \$198,795 per acre, or \$4.56 per square foot. The cost of redeveloping this site compares favorably to similar greenfield development.

3. Observation and Analysis

The OENJ Project in Elizabeth has proven to be a successful endeavor between business, community groups, as well as state and local authorities. This project confirms that the redevelopment of a brownfield site can benefit both the community and business interests. By working with the New Jersey Department of Environmental Protection, as well as other state and local entities, the community was able to attract commerce and remediate a derelict, abandoned site. By creating a tidal wetland integrated into the regional ecosystem and incorporating beneficial reuse of dredged materials from the harbor, the developer is balancing the importance of economic development with environmental preservation.

From RPA's perspective, the project successfully demonstrates that ample land exists in formerly industrial areas in northern New Jersey that can be redeveloped for viable re-use, saving time, money, and the state's precious environmental resources. Recommendations that resulted from the project included improving agency coordination, implementing and enforcing existing laws that create incentives for redevelopment, and thinking regionally in balancing urban economic development and environmental conservation. The project also recommended that additional public funds and tax incentives be implemented to help municipalities and non-profit community groups prepare sites for redevelopment. Other recommendations of the project—such as reinstating a tax-increment financing program in New Jersey for crucial infrastructure investments and implementing a transfer of development rights program as part of the Hackensack Meadowlands Special Area Management Plan—were not achieved, but remain part of the larger debate about planning and land use in New Jersey today.

F. Magic Marker Site, Trenton

1. Overview

The 7.5-acre Magic Marker site is located within a mixed residential neighborhood in Trenton. From the 1930s to 1980s, the site was used to manufacture batteries.

Throughout the 1980s, the site housed the manufacturing plant for Magic Marker and employed up to 200 people. Magic Marker Industries was not suspected of significantly contributing to the site contamination. In 1989, Magic Marker filed for bankruptcy, and the site fell into decay and neglect. The surrounding community, organized by a community-based organization, focused attention on the site as a major problem for their neighborhood. In a collaborative effort with NJ DEP and the City of Trenton, funds were secured to investigate and remediate the site, and redevelopment plans are being pursued.

2. Remediation

In the 1930s, a battery manufacturer acquired the site at 467 Calhoun Street. After 7 years, the site was sold to a different battery manufacturer, who used it until the 1980s, leaving a legacy of almost 50 years as a battery manufacturing location. During latter years, local residents complained about offensive smells emanating from the factory.

In 1994, Isles, Inc., with funding from NJ DEP, initiated a process to involve neighborhood residents in planning for site redevelopment and to focus wider attention on the site. City officials, regulators, and members of the environmental community were also closely involved in the process. Isles was founded in 1981, and has a track record of creating innovative and effective community development programs in Trenton. The group's programs address the critical needs of food, housing, environmental improvement, education and job-training through long-term community-based solutions. The Magic Marker process inspired residents to pursue redevelopment alternatives for the site, which included considering wider planning issues for the community.

As a first step to facilitating the remediation process for the site, in 1995 Isles held community meetings and talked with residents about their concerns regarding the property. Community members assisted with inventories of land and building use in the neighborhood. At subsequent meetings, the community discussed their physical and geographical resources, and considered the realities of site conditions, clean-up options, and possible re-use alternatives. In particular, the community considered the possibility of using phyto-remediation, an innovative technique involving plants to remove pollution from soil and water, to clean-up the site. This technology held the possibility of reducing cleanup costs, minimal site constraints, and a pleasing appearance during remediation.

Initial testing identified lead contamination on the site, both in surface soils and in the building interior, as the greatest environmental concern. Forty-six percent of the 1-acre test area exceeded the lead level permitted by NJ DEP for residential properties, measuring an average of 1,000 parts per million. The community agreed to try an innovative approach to dealing with the lead by planting Indian Mustard seeds to draw the lead from the contaminated soil. The seeds were first planted in 1996. By the end of the first planting season, only 26% of the test area exceeded NJ DEP lead standards (400

parts per million). Consultants estimated that each harvesting of plants removed approximately 20-30 parts per million of lead from the top 18 inches of soil, where most of the lead was found.

In November, 1997, the bio-remediation company performing the remediation harvested its final crop of Indian Mustard plants from the site. Further studies are still required, but preliminary results indicate that the plants reduced soil contaminants to levels which far exceed expectations. Isles continues to hold community meetings to discuss the latest government actions and issues related to the site redevelopment, such as organizing a community cleanup where over 30 volunteers from the Northwest Community Improvement Association, Americorp and community volunteers cleaned and removed over 8 tons of debris from a storm channel adjacent to the site.

3. Observation and Analysis

This project is one of the most successful in the country. With strong community involvement from the beginning, barriers and obstacles to brownfields redevelopment were removed before they surfaced. Several people have noted that without the community's close involvement and identification of the site as an obstacle to the community achieving its goals, the Magic Marker site would not have been addressed by the private sector. But in identifying an innovative technique for remediation and providing effective community planning, which set out a strong vision of what the community wants to be, this site has been remediated and made attractive.

A strong aspect of the success of this program was the leadership and advocacy provided by Isles. Each step of the process involved community meetings, and public announcements and newsletter documented the steps being taken. By bringing all the stakeholders into the process and keeping them involved, Isles created a model for community redevelopment for New Jersey and the nation.

G. Gateway Urban Renewal Corp./Daybreak Express, Inc., Newark

1. Overview

In 1995 an abandoned parcel of 4.8 acres, owned by the Newark Housing Authority, was sold to a trucking company looking to expand its terminal and office space. A redevelopment corporation formed by the principals of the trucking concern purchased the land at a reduced rate, due to its environmental contamination. The Newark Economic Development Corporation (NEDC) helped to arrange financing of the venture. The New Jersey Economic Development Authority arranged a Small Business Administration low-interest loan combined with conventional financing through First Union National Bank and a tax abatement from the City of Newark. In 1997, after the environmental remediation

was completed, the site was the location of a newly-constructed freight terminal and offices and 70 jobs.

2. Remediation

Daybreak Express, Inc., was a fast-growing trucking company which needed to expand its terminal and office facilities. In late 1993 the company approached the Newark Housing Authority and located a suitable site, a former landfill a few blocks from its leased facility

in the Ironbound area. As part of due diligence prior to agreement on purchase, a detailed physical inspection was conducted by a geologist. This included use of a magnetometer and digging of shallow holes. This inspection was followed by excavation of eight test pits five-to ten-feet below grade. The soil and fill material at the site were physically and chemically characterized and three groundwater monitoring wells were installed. Water samples were analyzed by an independent laboratory. The overall conclusion was that, while the site was below standards for residential use, it could be used for industrial purposes.



Figure 8: Successful brownfields redevelopment projects, such as Daybreak Express in Newark, are critical to realizing RPA's goals for the region.

This process followed standards promulgated by the NJ DEP. An appropriate remediation strategy was to minimize human exposure (direct physical contact and inhalation) to contaminated fill areas at the site. This was accomplished by limiting use of the site to industrial purposes and by covering the contaminated fill material as part of future development. Such coverings of the fill material also minimize the possibility of chemicals from the fill leaching to underlying groundwater. The company received its letter of No Further Action in 1997.

The contaminated site was purchased for \$450,000. Cleanup, including removal of buried metal debris and documented disposal of same, cost approximately \$150,000. An additional cost of about \$125,000 was incurred for environmental studies of the site. These were components of the \$3 million project, which resulted in the construction of a

new 40-bay, 32,000 square-foot terminal with 5,000 square feet of offices. In addition, Daybreak's 50 employees remained in Newark, ten more jobs have since been filled as Daybreak continues to grow (with more new jobs planned), and a leading broker of produce transportation has leased 25% of the office space and has moved into Newark with its ten employees.

The New Jersey Economic Development Authority (EDA) facilitated a federal Small Business Administration (SBA) loan for the purchase of the site and to build the terminal warehouse. The SBA program that was used allows qualified business owners whose expansion plans call for the investment in, and use of, real estate or equipment to receive up to 90% financing. The SBA loan represents 40% of the financing, with 50% provided by a traditional financial institution and the remaining 10% contributed by the borrower.

Under the terms of this financing, Daybreak's development corporation, Gateway Urban Renewal Corp., received \$2.666 million in loans. First Union National Bank, which had a banking relationship with Daybreak, provided \$1.7 million in financing and the SBA low-interest loan provided \$966,000.

An additional incentive for Daybreak to take on the two-year cleanup process was a 10- to 15-year tax abatement from the City of Newark. During the term of the abatement, Gateway will pay an agreed amount yearly in lieu of property taxes. This financing mechanism is not unique to brownfields. The SBA, NEDC and EDA provide these types of loans to companies that can quantify jobs created in a depressed community.

3. Observation and Analysis

A government low-interest loan, a tax abatement, and guidance by a city agency through the process enabled Daybreak Express to take advantage of several government incentive programs to remediate an abandoned brownfield site to a reuse that created new opportunities in a depressed community. In this instance there were excellent incentives for Gateway and Daybreak to undertake the project. In addition to an excellent location and existing utilities, beneficial financing and property tax relief were offered. The developers stress that these factors were very important in the company's decision to accept the risk of future liability, adverse public reaction and the possibility that NJ DEP might require remediation to an unrestricted standard, rather than accepting remediation for industrial reuse.

This case study demonstrates a successful application of incentives targeted at both brownfield redevelopment and urban redevelopment, illustrating the close relationship between these two objectives. The developers worked with NJ DEP and financial institutions to create a project that both remediated a site and brought new investment and employment to a community, also demonstrating the multiple benefits that can be achieved.

IV. Recommendations

“Government must go beyond regulation and offer the vision, create the incentives, provide the tools, and support those who embrace the vision.”

-- Christine Todd Whitman

RPA’s Third Regional Plan argues that to re-center, re-green and re-connect our Region, development should be focused in existing urban areas and downtowns. New Jersey offers excellent legislative, regulatory and economic assistance to aid communities in redeveloping brownfield sites. But planning for brownfields redevelopment requires that communities target sites for reuse and then strategically work with the tools they have to make their visions become reality. Most importantly, remediation and redevelopment need to be understood as one continuing process; a process which requires effective community involvement and planning from its earliest stages.



Figures 9 and 10: Two renderings of an urban industrial waterfront: at present (left) a mix of working and derelict factories and dumps, and after reclamation (right).

Public policy directed at redeveloping brownfield sites needs to recognize the different tiers of sites presented earlier in this report: sites that pose some contamination issues, but

are economically viable development projects (“tier one” sites); sites that would be attractive, but have higher contamination risks or less attractive marketability, so they require some types of incentives to move forward (“tier two” sites); and sites that have high environmental risks and do not hold great economic potential even if they were clean, due to poor location, lack of access or unclear reuse potential (“tier three” sites).

- “Tier one” sites may not require public incentives and subsidies which should be focused on other sites. Furthermore, their remediation and redevelopment should be consistent with the surrounding community’s zoning and planning.
- Making “tier two” sites attractive for private investment should be the primary objective of financial incentives. Once in that category, remediation and redevelopment plans should again be consistent with the surrounding community’s zoning and planning.
- “Tier three” sites may justify considerable public or philanthropic involvement on a highly selective basis. Public policy must concentrate on remediation and redevelopment of sites that pose health risks and deter economic development in lower-income communities throughout the region. Considerable public investment dollars must be available to support such public policy.

Within this three tier framework, the Regional Plan Association New Jersey Metropolitan Brownfields Initiative Steering Committee recommends that new planning, policies, and regulations should focus on:

- The agenda of a state-wide task force.
- Strategic funding for brownfield sites.
- Improving municipal brownfield plans.
- Implementing design and planning workshops to initiate community involvement.
- Exploring the potential for environmental insurance packages.

A. Brownfields Task Force

The 1998 Brownfield and Contaminated Site Remediation Act established a Governor’s Task force on brownfields charged with several assignments, including creating an inventory of brownfields sites in the State, developing policy, and marketing sites to developers.

The Metropolitan Brownfields Initiative Steering Committee recommends that this State Brownfields Task Force should set broad policy guidelines for state programs and municipal plans and provide review to ensure that these guidelines are met. The criteria for

these guidelines will ensure consistency between local plans and state agencies. In addition, this task force should also provide:

- Certification of local brownfields redevelopment plans (which should be required for funding) and guidelines for municipalities to structure their plans.
- Analysis of state agency programs to ensure they meet economic, environmental, community, and social goals for brownfields redevelopment.
- Technical assistance for planning, remediation and coordination of funding programs related to brownfields redevelopment.

This identified program should be housed in the Department of Community Affairs and should report to the legislature and Governors' office, creating a public advocate for municipal redevelopment plans.

B. Strategic Funding

The Hazardous Discharge Site Remediation Fund is a popular and effective program, and tax abatements (such as the Environmental Opportunity Zone legislation, described in the Appendix) can also direct financial resources at site remediation. However, these state programs have lacked strategic planning. Through a certification process, municipal grants and state incentives should be targeted toward urban areas with the greatest need for redevelopment and toward projects that both require the funds but also have the greatest potential for success.

The 1998 Brownfield and Contaminated Site Remediation Act legislated prioritization for the Hazardous Discharge Site Remediation Fund. Other incentive programs, such as the new Remediation Reimbursal program, should also be held to guidelines that ensure the funding is used strategically. The legislation establishing Remediation Reimbursal programs instructs the State to consider several factors in negotiating reimbursement agreements, including the degree to which the project advances State, regional and local goals; the relationship of the proposal to local development plans; the necessity of the agreement to the project's viability; and anticipated economic development and job creation if the project is successful. These are excellent guidelines, and they must be implemented to ensure that communities fund projects with real development potential and in accordance with community concerns.

Through local planning processes, success for a project should be defined by the degree to which a project achieves economic development goals, site remediation goals, and community improvement goals. In addition, the Spill Fund would continue to serve as a resource for publicly funded remediation of the very worst sites in terms of contamination and economic potential.

C. Municipal Brownfield Plans

The case studies and interviews conducted during this project identified community vision and planning as critical components of successful brownfields projects. But planning structures need to incorporate their goals and visions into municipal plans. Municipalities in New Jersey have been given a host of tools—including tax abatements, liability relief, and funding sources—that make them potentially significant actors in the brownfields redevelopment game. Planning structures need to change, to emphasize these new tools and to educate local officials about available resources.

The Appendix of this report summarizes the incentives available to communities and developers to address brownfield sites. With the new tools available to New Jersey communities, local planning efforts should focus on putting these tools into implementation. These funds should be used consistently with master plans and the New Jersey State Development and Redevelopment Plan. Planning for strategic redevelopment of brownfield sites should be considered in the State Planning Commission's Centers designation process and should be targeted by Urban Coordinating Council (UCC) activities. After successfully going through a designation process with the UCC, a neighborhood plan receives a Community Director, an Office of Neighborhood Empowerment staff coordinator and an interagency team of state advisors to assist with implementation of the plan, which should include a brownfields component. Designated UCC Empowerment Neighborhoods receive priority access to state resources, including priority review for all efforts related to brownfields redevelopment. Funding for municipal brownfields plans may also be available through EPA Brownfield Pilot Program grants for small communities to work on regional plans that capitalize on brownfield sites and provide guidance and incentives for private investment.

D. Community Design and Planning Workshops

New Jersey's 1998 brownfields legislation addressed many developers' concerns and found some common ground between business and environmental advocates on certain issues, including liability reform and financial incentives. However, several groups have expressed concerns, noted earlier, that the legislation may have weakened communities' ability to become involved in local brownfield redevelopment projects. Others respond that community involvement requires commitment, sophistication, and responsibility, all components that are not nurtured by our current confrontational framework.

This debate, however, only served to underscore the fundamental problem: community involvement in brownfields reclamation projects needs to be an effective and constructive part of the redevelopment process. Too often, developers and local officials do not encourage community participation, for fear of "waking a sleeping dragon." And

communities have not seen how they can become effectively engaged in these projects and ensure that their participation will lead to successful outcomes.

To bridge this gap between redevelopment plans and community interests, the State should promote community design workshops in urban communities to demonstrate new models for constructive community involvement and design. Since the publication of the first regional plan in 1929, Regional Plan Association has advocated sensitive design and planning for communities. The 1929 plan's second volume, "The Building of the City," proposed new concepts that were incorporated in a residential development in Queens, Fresh Meadows: mixed-level residences, nearby schools and shopping, open spaces, and pedestrian connections. RPA's Second Plan, published in the 1960s, included a volume titled "Urban Design Manhattan," which presented new concepts for linking vertical and horizontal infrastructure and locating office development projects adjacent to existing infrastructure. And RPA's Third Regional Plan, published in 1996, promotes redevelopment of centers throughout the region and proposes a range of strategies, such

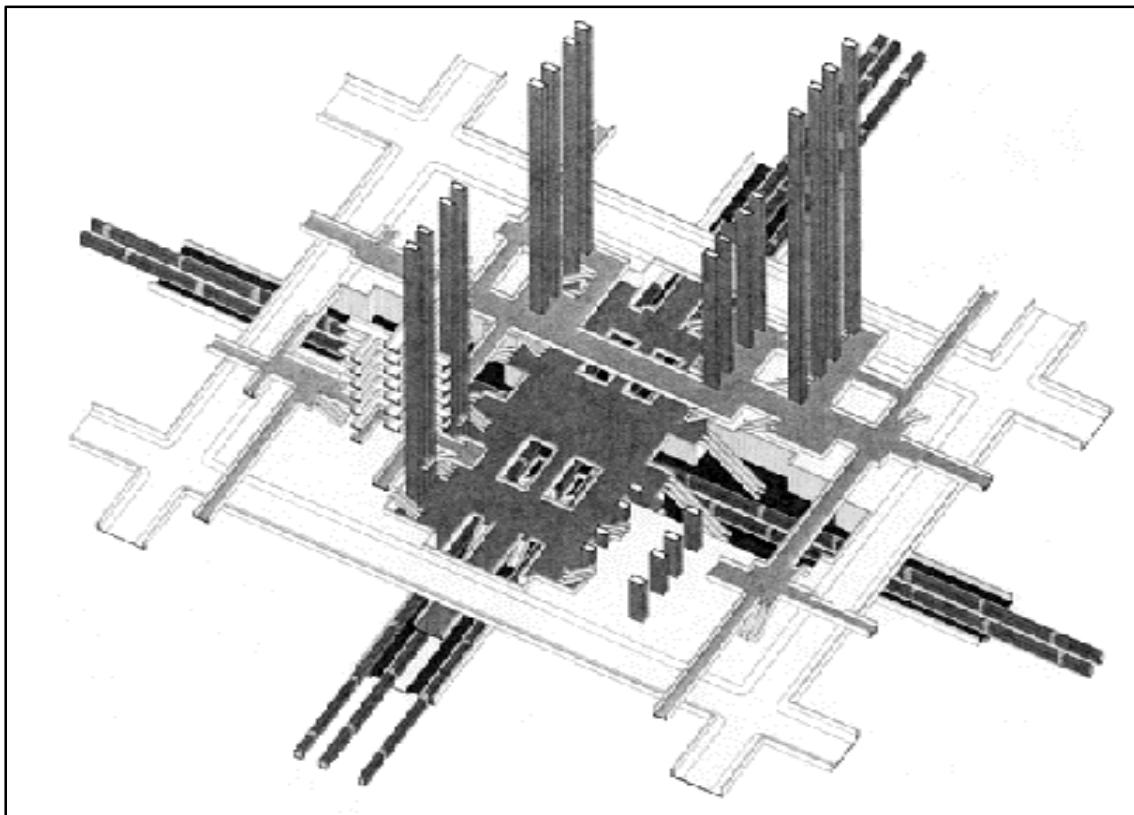


Figure 11: The "Access Tree Diagram" from a volume in RPA's Second Regional Plan, *Urban Design Manhattan*, demonstrated how new concepts in planning and design – in this case the relationship between vertical and horizontal infrastructure systems in the 1960s – could create new types of communities within a regional context. Similarly, RPA's Third Regional Plan promotes new concepts in planning and design – particularly the strategic redevelopment of brownfield sites targeted by community design workshops – to focus development to the region's central business district, eleven regional downtowns, and transit- and pedestrian-friendly communities throughout the region.

as transit-friendly design, regional housing plans, and promoting arts districts, to make downtowns more attractive destinations to live, work and visit.

To demonstrate these strategies, RPA has organized community design workshops built on the “charrette” model, where a team of urban design experts was brought in, representing both local and outside practitioners, for an intensive several-day brainstorming session to address development and design issues related to a site. The experts met with local officials, community groups and interested parties, and made proposals for design, programming, transportation patterns, financing options and other issues. These proposals were translated into visual presentations—both pen-and-ink renderings and new techniques that incorporate sophisticated computer modeling for visual simulations—that help communities understand in concrete images what the team is recommending and what types of options they have for a site:

- The Princeton Junction project created an urban design “kit of parts,” which allowed community representatives to experiment with different components of the downtown landscape, to see what alternative future they could plan for their community.

- In West Milford, RPA demonstrated how seemingly conflicting goals of preserving large tracts of contiguous open space and assuring a vital commercial downtown could be achieved. By assembling a local steering committee and preparing visual simulations of development options for the town, RPA presented alternatives to sprawl development patterns. The project identified five crucial elements to preserving open space and building a vital center: adequate infrastructure, transfer of development rights programs, permitting density in the town center, mapping a grid pattern of local streets, and finding strong local leadership.

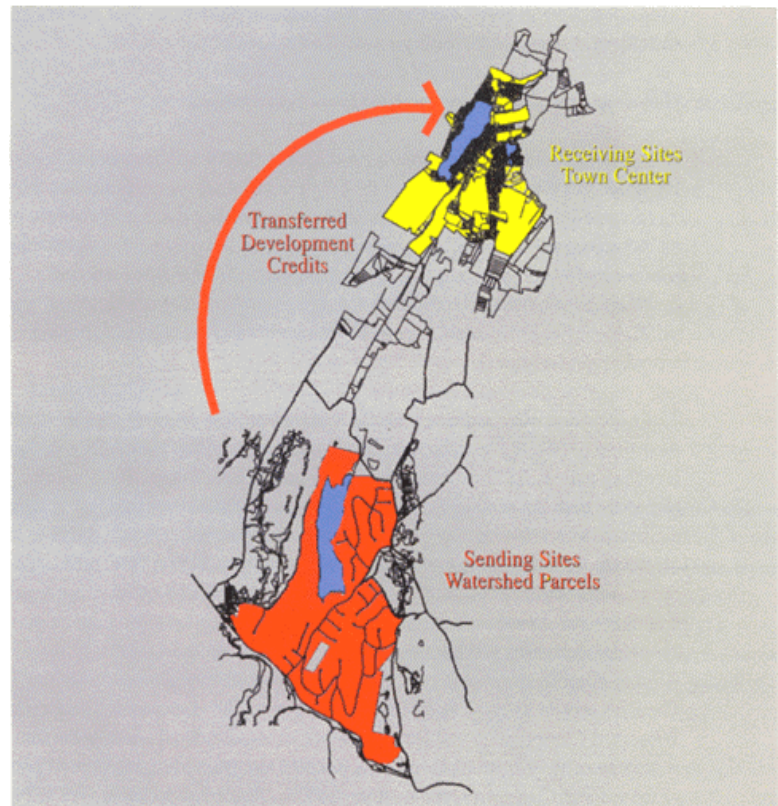


Figure 12: In West Milford, RPA proposed a transfer of development rights program to preserve sensitive lands while encouraging economic development.

These processes are examples of strategic planning in municipalities that bring regional and local objectives into accord. Bringing brownfields policy and community design together and focusing on a specific brownfield site would provide community advocates with the tools that can make their involvement more effective, even as the larger regional issues of brownfields redevelopment are translated into a local redevelopment program.

E. Environmental Insurance

Insurance packages can provide broad benefits to encourage the redevelopment of brownfield sites, but they need to become better understood and more widely used. In particular, environmental insurance packages may hold the key to unlock the current practice of “warehousing” sites.

Environmental insurance is a tool provided by the private sector that is readily available to sellers, buyers and lenders involved in the redevelopment of brownfields. At this time, these insurance packages are almost a “best kept secret.” Reasonably priced insurance products exist that can cover losses related to various aspects of brownfields redevelopment, including:

- Third party bodily injury and property damage.
- Claims for contract damages.
- Clean up costs.
- Legal defense costs.
- Rent or business interruption losses.
- Real estate carrying costs.
- Remediation cost overruns.

Savvy developers are increasingly using this insurance to secure private capital from commercial banks, investment banks, and real estate investment trusts. However, remediation costs remain a significant concern, particularly for responsible parties. Large companies that control contaminated sites are often unwilling to make a transaction except under very limited circumstances. In particular, these companies may be unwilling to consider selling properties to potential buyers who pose any risk of bankruptcy (whereby the site, its remediation costs, and expanded liability could revert back to the large company). This leads to “warehousing” of sites, which impedes redevelopment efforts.

Without weakening New Jersey's strong policy that polluters should pay to clean up their sites, planners must look for new ways to address this issue. Public policy should seek remedies to induce polluters to move sites forward through the Voluntary Cleanup Program or other alternatives. Both bonuses and penalties may be examined, to help provide impetus to return these sites to active uses. Environmental insurance packages, however, may also provide solutions to the warehousing issue. If insurance packages can provide responsible parties with assurances that they are protected from worst-case scenarios, these sites may be returned to the active market at a faster rate.

V. Appendix

A. *Brownfields Legislation*

The past few years have seen a marked increase in the scope and amount of brownfields related legislation. On both the federal and state levels legislators and regulators have been working to improve access and understanding of environmental reuse legislation. What follows is a brief outline of those laws that most directly effect brownfields redevelopment in New Jersey. Please note that this is in not a comprehensive view. For example, although the federal Department of Housing and Urban Development has several programs that affect brownfields development directly, these programs have not been included.

1. Federal Law

a) *Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)*

Under CERCLA, extremely polluted sites which threaten human health or the environment are placed on the National Priorities List. EPA will seek a court order directing a Responsible Party to perform a cleanup or will undertake a Remedial Action to clean up sites on this list and will sue Potentially Responsible Parties to recover the cleanup costs. EPA may also undertake a removal action to clean up a site which is not on the National Priorities List, for example, bringing action against a “midnight dumper” of toxic substances in a residential neighborhood. If the Superfund program conducts the cleanup, the government can take legal action against responsible parties to recover up to three times the cleanup costs.

CERCLA created a \$1.6 billion Hazardous Substance Response Trust Fund which is supported by an excise tax on feedstock chemicals and petroleum to pay for cleanup activities at abandoned waste sites.

(1) Superfund Act Reauthorization Amendment (SARA)

In 1986, CERCLA was reauthorized and amended by SARA. SARA expanded the federal government’s response authorities to assure that federal facilities are subjected to the same CERCLA requirements as private industry. Funds from the Superfund do not go towards paying for the cleanup of releases from federally-owned facilities. With SARA, the Superfund Trust Fund increased to \$8.5 billion. Allowable uses of the fund under SARA include cost of assessing injury to and restoration of damaged natural resources and certain costs associated with enforcement and abatement action.

(2) Community Environmental Response Facilitation
Act of 1992 (CERFA)

CERFA amended CERCLA to require the federal government to identify real property where no hazardous substance had been 'stored, released, or disposed of.' This identification served to expedite the sale of government property and allowed the sale of uncontaminated government property to be sold prior to the entire site being fully remediated. The prompt identification of these uncontaminated-properties is intended to facilitate the transfer of such property for economic redevelopment purposes.

b) Resource Conservation and Recovery Act (RCRA)

RCRA regulates the manner in which business treat, store and dispose of hazardous waste. Under RCRA, the EPA can require a Corrective Action (i.e. cleanup) by parties who are liable for the release of hazardous waste from facilities which are required to have RCRA permits. RCRA Corrective Actions operate in a similar fashion to CERCLA Remedial Actions. Under a citizen suit provision, "any person may commence a civil action on his own behalf" against a party in violation of RCRA.

c) Related Brownfields Laws

(1) Clean Air Act (CAA)

The Clean Air Act was introduced in 1971 to control air pollution from trade and industrial premises. The Act was amended three times in 1975, 80 and 90. The Clean Air Act Amendments of 1990 require EPA to issue standards over a 10-year period regulating emissions of 189 toxic air pollutants from various industries and other sources.

Certain industries which are potentially polluting are designated as "scheduled premises" in the Act to enable stricter control. An industry of such premises requires the prior Written Permission of the Director of U.S. EPA Air Pollution Control before occupying a site and beginning operations. Notices can be served under the Act to any trade and industrial premises requiring the operators to take remediate action to abate air pollution problems within a certain period time. Under the Clean Air Order of 1973, the use of open fires in trade and industrial premises, including construction sites for the disposal of wastes has been banned.

(2) Clean Water Act (CWA)

In 1972, Congress enacted the first comprehensive national clean water legislation in response to growing public health concern regarding water pollution. The Clean Water Act is the primary federal law that protects the health of our nation's waters, including

lakes, rivers, and coastal areas. As we enter the 21st century, EPA, states, tribes and local governments will focus efforts on three key goals: strengthening public health protection, preventing polluted runoff and ensuring community-based watershed management. The Clean Water Act was reauthorized and the revised standards could, potentially, affect brownfields redevelopment.

(3) Intermodal Surface Transportation Efficiency Act (ISTEA)

The Intermodal Surface Transportation Efficiency Act (ISTEA) provided funding and policy guidance for highways and transit programs for federal fiscal years 1992 to 1997. ISTEA revolutionized the federal role in transportation by directing billions of dollars towards metropolitan transit and highway systems, and by giving states and metropolitan areas broad discretion to set their own priorities for investments. In 1997 Congress began considering legislative proposals to reauthorize ISTEA. A critical issue for the New York-New Jersey-Connecticut Metropolitan Region is whether it will continue to receive its fair share of federal funds. When the House and Senate deadlocked over the issue of how much funding could be put into transportation for the next six years, both houses passed 6-month continuing resolutions, to keep funds for important projects flowing, and agreed to take up the debate again in 1998. In early 1998, bills being considered in both houses would significantly increase transportation funding for the entire country. A connected issue, however, is whether the funds are still based on a formula which favors demonstrated need or gasoline tax revenues generated in each state.

ISTEA restructured the Federal-aid highway program by creating broad funding categories. Those categories include the Surface Transportation Program (STP), the National Highway System (NHS), Congestion Mitigation and Air Quality Improvement Program, among others. ISTEA funds are generally distributed directly to the cities and states by formula grant.

ISTEA funds allocated to states, cities, and towns can be tapped as a source of funds for brownfields redevelopment. Generally, ISTEA funding may be used to fund brownfields site assessments and cleanup if the site is associated with, or even next to, a transportation project. While the emphasis of the ISTEA is on preservation, operations and management of existing transportation facilities, state and local governments have broad flexibility under ISTEA to ensure that both transportation and the environment are improved.

d) Relevant Federal Legislation and Existing Programs

Over two dozen brownfields-related legislation have been introduced over the past year. Rather than highlight several—oftentimes similar—legislative bills, what follows is a quick analyze of federal legislation that RPA commented on. The following bill, introduced by

Senator Frank Lautenberg, is an attempt to replicate the successful New Jersey State Hazardous Discharge Site Remediation Fund on the national level.

(1) H.1395/S.18

Submitted by Congressman Rothman in the House of Representatives and Senator Lautenberg in the Senate, this legislation would provide grants to state and local governments to evaluate brownfield sites (not to exceed \$200,000) and to establish low interest loan programs for cleanups (not to exceed \$500,000). It limits liability to purchasers and developers of such sites, exempting a “bona fide prospective purchaser” (defined elsewhere in the legislation) from liability provided he does not impede the performance of response actions or natural resource restoration at a facility. The bill would also clarify the exemption from liability of innocent landowners.

(2) Internal Revenue Code of 1986

The Internal Revenue Code of 1986 could be modified to encourage economic development through the expansion of the empowerment zones and enterprise communities.

(3) Voluntary Cleanup Programs (VCP)

The VCP is a state run program that encourages the remediation of toxic waste sites by private parties with NJ DEP oversight. VCP removes some environmental barriers to redevelopment.

(4) EPA’s Brownfields Initiative

This Initiative encourages the redevelopment of brownfields sites through grant programs. These grants are used to provide funding for preliminary site assessment and pilot projects.

(5) Environmental Protection Agency/Department of Justice Joint Policy Initiatives

In 1995, the EPA and the Department of Justice released a joint policy to ease some liability concerns at brownfields sites. The Prospective Purchaser Agreement Guidance and the EPA/DOJ Enforcement Guidance Memorandum are two examples of this joint initiative.

2. New Jersey State Law

a) Environmental Cleanup Responsibility Act (ECRA)

ECRA, which was amended by the Industrial Sites Recovery Act (ISRA) in 1993, requires the owner and/or operator of an environmentally contaminated site to pay for all associated cleanup costs. The owner/operator are always seen as the Responsible Party for any contamination prior to the sale of the property. All persons seeking to sell, transfer, or cease operations must abide by these requirements before any sales transactions occur. This law was designed to ensure that both buyer and seller are aware of all potential environmental problems. Many industrial sites suffer from soil, ground water, and surface water contamination leaving them contaminated and hard to sell. If a preliminary assessment, site investigation and remedial investigation reveal a level of contamination which is a threat to human health, the owner must undertake remedial action.

b) S-1070: Industrial Sites Recovery Act (ISRA), Hazardous Discharge Site Remediation Act (HDSRA), and Spill Act Amendments

In 1993, S-1070 offered increased flexibility in the State's environmental cleanup procedures. Among other provisions, S-1070 allows differential risk-based standards for residential and nonresidential property depending on the type of reuse, encourages self-monitored remedial investigations, and provides grants and loans for cleanup. The intent of these new provisions is to streamline the cleanup process without sacrificing important environmental safeguards.

As with ECRA, ISRA is triggered when a potential buyer or seller attempts to sell or buy property. At this time, the original owner must complete a preliminary assessment and site investigation (PA/SI) to ensure that there are not environmental contaminants which pose a threat to public health. The responsible party must continue through the process until New Jersey Department of Environmental Protection approves the transactions and issues a No Further Action letter. In practice, many industrial sites are contaminated and require further remedial action.

c) Environmental Opportunity Zone Act

The Environmental Opportunity Zone Act provides an economic incentive for businesses to develop industrial properties through property tax exemptions. The developer enters into a mutual agreement with NJ DEP and is required to remediate and develop the site. In addition to the Memorandum of Agreement with NJ DEP the developer must also enter into an agreement with the municipality to make payments in lieu of taxes. The phased-out

property tax break extends over a ten year period which starts at zero and increases by ten percent each additional year.

The EOZ designation has two benefits to developers and property owners:

1. For 10 years, property taxes are forgiven on a decreasing scale—100% is forgiven the first year, declining by 10% every year thereafter.
2. For 10 years, the assessed value of the property is fixed, “regardless of any improvements.” If a large building is erected on an EOZ-designated site, the property owner has a window of time during which he will pay taxes only on the property’s pre-development assessed value.

This law is fairly new so there are few developers who have taken advantage of this unique opportunity. Only Vineland and Newark have EOZ ordinances in place, and as of yet no developers have been approved for the tax abatement. Other municipalities have expressed hesitancy about utilizing the legislation, because the impact of the tax abatement could go far beyond what they feel is appropriate in terms of public assistance for brownfield remediation. However, for the most distressed properties, investors will argue that only a generous abatement will stimulate market interest.

The Brownfields and Contaminated Site Remediation Act of 1998 made several amendments to the EOZ legislation:

- The abatement may be applied to properties that are being redeveloped for residential use.
- The abatement may be extended to fifteen years to encourage a developer to achieve a higher cleanup standard.
- The abatement expires when a developer has recovered the cost of remediating a site, even if it has been less than ten years.

Several guidelines should be observed by municipalities considering use of the EOZ. The abatement should only be applied in those situations where clean-up costs exceed the value of the property. These are projects that would not otherwise go forward, without this generous financial incentive. The bill is intended to provide financial help for remedial actions. However, differentiating between development costs and remediation costs is extremely difficult (the current definition of “Remedial Action Costs” includes land purchase and other development costs), and the existing legislation does not require a linkage between remedial costs and tax savings.

Working out the issue of the EOZ in Newark, several issues have been raised about how the program should be administered. A central issue of discussion has been the potential

for abuse of the EOZ ordinance. The opportunities for abuse include: a potential of “windfall” profits for developers that are way out of line with remediation costs, and the potential for the City to be liable to the County for taxes that were never collected. The application for approval of an EOZ abatement should identify how much value will be created by the developer’s proposed plan, and whether a generous tax abatement is necessary to move the project forward.

d) Urban Redevelopment Act

The 1996 Urban Redevelopment Act (URA) was created to assist in the revitalization of New Jersey’s urban areas. In creating the New Jersey Redevelopment Authority, the new law encourages redevelopment projects on abandoned properties and authorizes the use of payments in lieu of taxes as a financing method. Municipalities are able to pursue negligent owners and operators who need to remediate and develop their property by declaring the property abandoned. Once the property has been listed and the owner neglects to appeal said, a tax sale of the property may proceed. An owner who wishes to remove the site from the abandoned property list must comply with all NJ DEP regulations. The law also includes a limitation on liability for new owners who purchase a site that received a no further action letter from NJ DEP and have maintained all required institutional and engineering controls. Because this provision only applies if the site is located in a qualified municipality few people have yet to benefit from this new law.

The URA also provides an Office of Neighborhood Empowerment (ONE) and the Governor’s Urban Coordinating Council (UCC). These entities are designed to further promote revitalization efforts through the creation of Empowerment Neighborhoods. After successfully going through a designation process with the UCC, a neighborhood plan receives a Community Director, an ONE staff coordinator and an interagency team of state advisors to assist with implementation of the plan.

Designated UCC Empowerment Neighborhoods receive priority access to state resources, including priority review for all efforts related to brownfields redevelopment.

e) Municipal Landfill Site Closure, Remediation and Redevelopment Act

This law encourages redevelopment of municipal solid waste landfills through sales and tax revenues. The developer must enter into a memorandum of agreement with the State and agrees to perform an environmentally sound and proper closure and remediation of a municipal solid waste landfill located at the site of the redevelopment project. In return, the State agrees that the developer is eligible for a reimbursement of up to 75% of the costs of closure and remediation. Developers can receive reimbursement funds from the generation of sales and tax revenues by the redevelopment project and the Municipal

Landfill Closure and Remediation Fund. This law also enables municipalities to redevelop solid waste landfills through loans from the Sanitary Landfill Facility Contingency Fund.

f) Brownfield and Contaminated Site Remediation Act

Governor Whitman signed the Brownfield and Contaminated Site Remediation Act on January 6, 1998. The Act made several changes to the law in order to facilitate the remediation of contaminated real property.

Last spring, RPA/NJ presented initial testimony on the proposed legislation. The final bill from both Houses incorporates many of the aspects of this testimony. Relevant issues that RPA/NJ focused on throughout the legislative process include issuance of a Covenant Not To Sue, third-party protection, and several other provisions.

The final version of the Brownfield and Contaminated Site Remediation Act addresses the issues of brownfields revitalization in four areas: financial issues, technical policy issues, legal liability, and institutional issues.

(1) Financial Issues

*(a) Environmental Opportunity Zone
Amendments*

RPA/NJ was very involved in the passage of the Property Tax Exemption Limits. This amendment to the Environmental Ordinance Zone (EOZ) legislation allows a municipality to terminate a developer's tax abatement upon his recovering the full cost of remediating the property. This protects the City from allowing a "windfall" profit for the developer that could be several orders of magnitude above the costs of remediating the site.

RPA/NJ also proposed a second amendment which would have protected cities from the potential liability for County and School Aid assessments that are not being collected from Environmental Opportunity Zone-designated properties. Harris Adams, Tax Division, Office of Legislative Research, has indicated that this type of protection for cities already exists. The state's Payment in Lieu of Taxes (PILOT) provision determines that assessments would not be levied by a county or school district on a tax-abated site. However, discussions with the Newark Corporation Counsel indicate that there is still concern that a city could provide an abatement for a property under the Environmental Opportunity Zone and still be liable to the county for property taxes that it is not collecting.

(b) Incentives for Unrestricted Use Remedies

The bill provides several incentives for persons who perform unrestricted use remedial actions or limited restricted use remedial actions—25% matching funds on grants up to

\$100,000, if the developer has less than \$2 million in assets; elimination of the requirement to post a remediation funding source; and allowance of up to 15 years property tax exemption in EOZ's. These incentives encourage developers to clean sites up to higher standards than they might otherwise. The amendment also provides for expansion of the EOZ to include residential sites.

(c) *Limitation of Fees*

The bill provides that remediation and removal costs as applied under the Spill Act do not include indirect costs. This has the effect of lowering fees assessed by NJ DEP to review a cleanup site.

(d) *Reimbursements for Remediation from Additional Taxes*

This provision allows the person redeveloping a site to enter into an agreement with the Commissioner of Commerce and Economic Development and the State Treasurer to reimburse the developer 75% of the costs of remediation. This reimbursement can be realized through property tax exemptions and state, local or federal tax incentives or grants.

(2) Technical Policy Issues:

(a) *Selection of Remedial Action*

This provision permits the developer to choose the cleanup method for a site without conducting a cost test comparing restricted and unrestricted use remediation. To assure that the preferred method will both remediate the site and protect human health and the environment, NJ DEP will be required to inspect those sites using engineering or institutional controls no less than once every five years.

This provision caused the most consternation among the environmental community. The Sierra Club is concerned that the terms exclude the public from the process of choosing a remedial action, and that the outcome would allow corporate interests to remediate zoned residential sites only to industrial standards, which could either force a community to accept future industrial uses or to render a site unusable.

NJ DEP states that because the developer must comply with the existing technical regulations, which include a provision on public participation, the public will be notified. Furthermore, NJ DEP has cited the revised bill language which states that "The choice of the remedial action to be implemented shall be made by the person performing the remediation in accordance with the regulations adopted by the Department and that choice of the remedial action shall be approved by the Department if all the criteria for remedial

action selection enumerated in this section as applicable are met.” {g. (1) lines 9-14}. The criteria referred to in the section include public participation in the selection of a remedial action plan.

Discussions with legislative staff and others found that it does not seem possible that a developer would be able to remove the public from the decision-making process. While the bill does shift the emphasis more to the developer’s choosing the remediation standard, most people assert that the bill requires that any site redevelopment would still demand community input. In either case, meaningful and productive community involvement in brownfields redevelopment remains an elusive goal, requiring further consideration.

(b) Regulatory Flexibility

If a mechanism exists, and NJ DEP agrees, the bill allows a developer to deviate from strict adherence to remediation regulations so long as the developer can demonstrate that this deviation will be equally as protective of human health and the environment.

(c) Aquifer Contamination Delineation

Provides NJ DEP with \$3 million from the 1996 Bond Fund to investigate and determine the extent of contamination of the States aquifers and to provide the information on the existing geographic information system (GIS). RPA strongly supported this provision and recommended that Bond funds should be used to assure that adequate funding existed to create the GIS. It would be more efficient to allocate the funding at the local level with the proviso that the municipalities use a compatible format that can be shared inter-municipally and between agencies.

(d) Innovative Technologies

There are several provisions designed to encourage the use of innovative technologies throughout the bill. When using innovative technologies, the developer no longer needs to provide proof of financing. The Hazardous Discharge Site Remediation Fund (HDSRF) will provide a 25% matching grant for use of innovative technologies. In this instance, RPA suggested that in light of many innovative technologies not adequately remediating the site, a provision should be included to assure that the companies use traditional cleanup methods if the innovations are not successful.

(e) Historic Fill

This bill provides that there is no date before which the substances buried can be considered ‘historic’ and that no regulation or rule will have the effect of shifting the burden of presumption onto NJ DEP. The legislature appropriated \$2 million from the

1996 Bond Act to investigate and map known areas of historic fill. The gathered information can be used by persons performing remediation.

(f) *Underground Storage Tank (UST) Sites*

This provision applies to one- to four- family residential sites. It determines that due to small tank size and relatively small potential for contamination, these sites need not conduct a baseline economic ecological effect report. Furthermore, as long as it does not preempt local ordinances that require notification, developers or residents of one- to four- family houses need not contact the municipality 45 days prior to implementing a remedial action on a UST holding petroleum.

(3) Legal Liability Issues

(a) *Covenant Not To Sue*

Provides that whenever NJ DEP issues a no further action (NFA) letter for a remediation, it shall also issue a Covenant Not To Sue. Many attorneys and developers have argued that without this protection, the threat of litigation is a significant deterrent to redevelopment.

(b) *Innocent Purchaser Provision*

Modifies existing laws to assure that an innocent purchaser will not be liable for third party suits at the date of the purchase of the property. This protection is dependent on the innocent purchaser pursuing remediation promptly, which is defined as beginning within 30 days of taking title to a site.

(c) *Public Liability*

Public entity liability law is amended to limit public liability for contaminated property acquired by any means, providing further encouragement for local governments to undertake brownfield remediation and redevelopment projects.

(4) Institutional Issues

The mission of NJ DEP as it relates to brownfields has been greatly expanded to include providing information to government and citizens on the environmental and public health risks involved with site remediation. The Brownfields Redevelopment Task Force, an eleven member task force consisting of government entities confirmed by the Governor,

was created. The task force will prepare and update an inventory of brownfields sites in the State.

A Risk-Based Corrective Action (RBCA) legislative commission has been formed to study the policy implications of New Jersey implementing a risk based corrective action program for petroleum release. The report is scheduled to be released within six months of the commission's first meeting.

(5) Positions

The legislation has been supported by NJ DEP, NJ Business and Industry Association, South Jersey Chamber of Commerce, NJ Fuel Merchants Association, NJ Chamber of Commerce, the NJ Petroleum council, Mobil Oil, and the Pinelands Commission. The Sierra Club, New Jersey Environmental Foundation opposed the bill, particularly due to the provision on selection of cleanup standards. The New Jersey Chemical Industry Council was also critical of the bill, maintaining that it is headed in the right direction but does not go far enough towards dismantling redevelopment road blocks.

B. Summary of Incentives

1. Liability Protection

Liability and legal risks for a property depend on several different aspects, including the level of contamination, identification of a Responsible Party, and how a site was acquired. Conservative lenders assume that whenever a borrower can be held liable for a site, the lender could subsequently be held liable in the event of foreclosure. Lenders will look for documentation that borrowers, lenders and subsequent purchasers are released from liability by a No Further Action letter, a Covenant Not to Sue, or other documentation.

Lender Liability Protection limits the liability of secured lenders regarding spills of hazardous substances and certain transfers of industrial facilities. Recent legislation is intended to encourage traditional lenders to make loans for cleanup contaminated property, thus creating an incentive to reclaim abandoned, industrial sites. As long as the lender does not participate in active management of facility operations, lenders will be exempt from liability for cleanup costs of the property on which the loan has been made. The legislation also provides that lenders that acquire property through foreclosure to protect secured credit interest will not be held responsible for contamination or discharge that occurred prior to foreclosure. However, lenders that acquire property through foreclosure are exposed to liability if contamination or discharges occur as a result of negligence after taking title to the property. [PL 1993, Ch. 112, 3e(1)]

Despite the reduced liability afforded through this law, it does not acknowledge all of the issues surrounding brownfields redevelopment. Liability is not the only barrier preventing

development projects from succeeding in urban areas. Urban decay has cast a negative shadow over many of America's urban cities resulting in a multitude of economic and social problems. The Act, however, does not reduce the risk of default or increase the incidence of success. Development projects must overcome insufficient capital and negative perceptions as well as environmental contamination which also affects regulatory liability.

Some have suggested that a way to deal with the liability issue, and to provide more finality than even a Covenant Not To Sue or Innocent Purchaser protection could offer, would be to set up a public insurance fund, into which a remediating party would pay to get a final sign off, similar to the proposed legislation in Connecticut. If a site that is signed off then requires further remediation at a later time, due to changing standards or new discoveries, the fund would kick in to cover the costs. This approach has been raised by representatives of large corporations, by environmental attorneys, and by private environmental consultants, as a means of finally laying liability issues to rest. Coupled with the increased sophistication of the indemnity packages now available to private developers, it seems to deserve closer consideration. Environmental groups could be expected to demand assurances that the fund will not become insolvent, even as corporations demand that the fund provide the finality that all other proposals and protections have lacked.

2. Environmental Opportunity Zone

The Environmental Opportunity Zone Act provides an economic incentive for businesses to develop industrial properties through property tax exemptions. The developer enters into a mutual agreement with NJ DEP and is required to remediate and develop the site. In addition to the Memorandum of Agreement with NJ DEP the developer must also enter into an agreement with the municipality to make payments in lieu of taxes. The phased-out property tax break extends over a ten year period which starts at zero and increases by ten percent each additional year.

The EOZ designation has two benefits to developers and property owners:

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This law is fairly new so there are few developers who have taken advantage of this unique opportunity. Only Vineland and Newark have EOZ ordinances in place, and as of yet no developers have been approved for the tax abatement.

a) Newark: Citywide Strategy

Newark has passed an ordinance that declares the entire boundary of the City to be eligible for designation as an Environmental Opportunity Zone. This strategy places the incentive on developers to show cause as to why they should be granted the abatement. Following this strategy, Newark has proposed to have application include employment projections and other economic development benefits from their projects. The Newark Pilot Program has also recommended to the City that it implement the abatement by requiring EOZ-properties to open an escrow account from which they may deduct their remediation expenses. This ensures that the amount saved by the abatement will actually be invested in the site.

Before winning a designation, each proposed site will have to undergo scrutiny through the Newark Economic Development Corporation, the Mayor's Office, and eventually gain approval from the City Council. The process requires sites to be up on tax payments, to be listed on the State's Known Contaminated Sites list, and to have an MOA with NJ DEP. However, the initiative is left with the developers to demonstrate that their site should qualify for such a potentially generous abatement.

3. EDA Programs

Founded in 1974, the New Jersey Economic Development Authority (EDA) is the New Jersey State agency for economic development, EDA has provided more than \$12 billion to help eligible businesses and not-for-profit groups on project development. The EDA works with businesses of all sizes and types—from sole entrepreneurs to world-wide corporations, over 6,000 manufacturers, distributors, service providers and retailers have been assisted by the EDA.

The goal of the EDA is to create and retain jobs that endeavor to strengthen New Jersey's economy and the economic base of local governments. EDA is involved in: public/private partnerships that bridge financing gaps and increase access to capital for small and middle-size businesses and not-for-profit borrowers; arranging low-cost financing, loan guarantees and financing packages; providing real estate development services; and making technical support available to strengthen targeted business sectors.

4. State Brownfields Task Force

The Brownfields and Contaminated Sites Remediation act of 1998 created the Brownfields Redevelopment Task Force, an eleven member task force consisting of

government entities confirmed by the Governor. The task force will prepare and update an inventory of brownfields sites in the State. The task Force will have five representatives of state government, and six members representing private interest groups. The private representatives would include development, finance, environmental, community-based, trade association, and regional planning perspectives appointed by the Governor.

5. Hazardous Discharge Site Remediation Fund (HDSRF)

In 1993, S-1070 provided \$55 million to establish a fund to finance the cleanup and investigation of contaminated sites. The loans are made by the New Jersey Economic Development Authority, working with the Department of Environmental Protection. The loans are available to industrial businesses that are required to perform remediation activities due to an operation closure, transfer of ownership or operations; responsible parties who discharged hazardous substances, and municipalities and private developers who enter the Voluntary Cleanup Program.

For a municipality to receive HDSR funds, it must have approval for the project from NJ DEP, own or hold a tax sale certificate for the site, and submit a completed set of EDA closing documents. Aide may be in the form of grants or loans for preliminary assessments, site investigations or remedial investigations (except for sites on which the municipality is the responsible party). Grants and loans may not be in excess of \$2,000,000 a year per municipality, and are subject to review by EDA and NJ DEP for eligible costs. The loans are available for up to ten years at 2 points below the Federal Discount Rate or 3%, whichever is greater. If a municipality is actively trying to sell a site, it may apply for a two-year moratorium on loan payments (interest, however, continues to accrue during the period). When a site with a loan is sold, the loan becomes due to EDA within 10 business days.

As part of this initiative, RPA surveyed recipients of HDSRF funds, to consider the success of the project and how it is being used. Contacts in these cities were all positive about the existence of the fund, finding it very useful to their economic development goals. When asked about remaining impediments, respondents cited the time and costs of remediation (once the PA/SI's are completed), the comparative cost advantages of developing on "greenfields" and the subsequent difficulties in finding private investors. Many respondents cited a desire for funds to begin remediation, particularly for demolition. Others added liability relief, tax relief for private investors, the difficulties of groundwater classification, and the complications of permitting and working with all the involved regulatory agencies in the ISRA process. Finally, others argued that triggering loan repayment in ten days if a transaction occurs reduces the attractiveness of these projects and municipalities' ability to put several projects together.

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Regional Plan Association is the nation's oldest and most influential independent regional planning organization. Since 1923, **RPA** has worked to improve the quality of life in the 31-county New York-New Jersey-Connecticut metropolitan area by creating long-term comprehensive plans and promoting their implementation across political boundaries. On the basis of rigorous professional study, the Association recommends policy initiatives and physical and human infrastructure investments and involves the public in considering and shaping its future. **RPA** takes positions on major current public policy issues and works constructively and cooperatively on a non-partisan basis with public and private sector interests to advance its agenda.

RPA's First Plan in 1929 provided the blueprint for the transportation and open space networks that we take for granted today. The Second Plan in 1968 was instrumental in restoring our deteriorated mass transit, preserving threatened natural resources and revitalizing our urban centers.

The product of more than five years of research and consultation, the Third Regional Plan was released in February, 1996. *A Region at Risk* presents a broad vision for making the region more competitive in today's demanding global economy. The Plan says that this new competitive environment requires that we make bold investments in our quality of life if we are to attract and retain increasingly mobile people and businesses. We must improve our Economy, Environment and Social Equity if we are to create a prosperous and satisfying future for all of the region's citizens.

The Plan makes 77 specific recommendations organized into five campaigns: Greensward, Centers, Mobility, Workforce and Governance. **RPA's** staff and board are organized around these five campaigns for the long-term process of advocating and implementing the recommendations. **RPA** will involve broad coalitions of civic and business interests in these campaigns to create powerful constituencies for change. We will use our long history of independence and objectivity to bring together diverse views and present balanced, practical solutions to the key public policy debates of today.

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