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LANDS OF LOST OPPORTUNITY: WHAT CAN BE DONE TO SPUR REDEVELOPMENT AT AMERICA'S BROWNFIELD SITES?

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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LANDS OF LOST OPPORTUNITY: WHAT CAN BE DONE TO SPUR REDEVELOPMENT AT AMERICA'S BROWNFIELD SITES?

TUESDAY, APRIL 5, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERALISM AND THE CENSUS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:17 a.m., in room 2154, Rayburn House Office Building, Hon. Michael R. Turner (chairman of the subcommittee) presiding.

Present: Representatives Turner and Foxx.

Staff present: John Cuaderes, staff director; Shannon Weinberg, counsel; Juliana French, clerk; Stacy Barton, Representative Turner/chief of staff; Neil Siefring, Representative Turner/legislative assistant; Adam Bordes, minority professional staff member; and Cecelia Morton, minority office manager.

Mr. TURNER. Good morning. A quorum being present, this hearing of the Subcommittee on federalism and the Census will come to order.

Welcome to the Subcommittee on Federalism and the Census's oversight hearing entitled, "Lands of Lost Opportunity: What Can Be Done to Spur Redevelopment at America's Brownfield Sites?"

In every community across this Nation there are abandoned parcels of property marring the faces of our cities and towns. Behind rusted chain link fences are broken windows and crumbling buildings. Beneath the surface there are substances contaminating the local environment, robbing the communities in which they exist of new jobs and other economic opportunities.

There are an estimated 450,000 to 1 million of those parcels, known as brownfields, across our Nation, contributing to community blight and thus lowering property values and decreasing tax revenues. These sites lay abandoned and unused due to Federal environmental laws and regulations that encourage abandonment of contaminated property by creating disincentives for cleanup and redevelopment.

Current Federal law triggers liability for remediation of contaminated properties once landowners have knowledge of the contamination. If redevelopment begins and contamination is discovered, the owner may be liable for remediation costs. If an owner abandons the property without disturbing the contamination, remediation costs may be avoided. The net effect of these laws and loopholes is the encouragement of abandoning brownfields.

If we are to achieve our goal of restoring these properties to productive use and redeveloping them into centers of economic and community vitality, we must craft a Federal response to a federally created problem. We cannot leave brownfields and abandoned factories as monuments to their once productive past. The redevelopment of brownfields will create jobs, new living and shopping options, and spur the improvement or development of transportation and infrastructure.

If we make redevelopment of brownfields more attractive, we can also help reduce urban sprawl and save green space. In my home town of the city of Dayton, over 50 acres of land surrounding our downtown are brownfields that would attract jobs and spur economic expansion—if the city had assistance in addressing the environmental contamination from past use of the parcels.

In 2002, the President signed the Small Business Liability Relief and Brownfields Revitalization Act of 2001. While the law codified and secured independent appropriations for the EPA's brownfields programs, the shining accomplishment of the act was providing some relief from the daunting amount of potential liability for acquiring and attempting to redevelop a brownfield site. Specifically, the act limits liability for owners of land that is contaminated by adjoining property as well as for prospective purchasers of known contaminated property.

The act also clarified the CERCLA "innocent landowner" defense and created additional liability relief by forbidding the Federal Government from intervening at sites being cleaned up under a State program except in certain circumstances.

These are strong first steps in encouraging brownfield redevelopment, and the subcommittee looks forward to hearing from the EPA on the effect of the program and the new liability relief and what it has achieved in this field.

We also look forward to hearing from the Government Accountability Office. Last year, I, along with Chairman Tom Davis, requested that GAO study the status of brownfield redevelopment across the Nation. GAO's report shows that stakeholders are generally positive about EPA's brownfields program but that additional incentives, such as a tax credit, are needed to spur brownfield redevelopment and really make a difference in communities across our country.

Last year, I introduced H.R. 4480, the Brownfields Revitalization Act of 2004, to address these two greatest impediments to redevelopment—liability and redevelopment costs. My bill proposed a tax credit of up to 50 percent for qualified remediation expenses of brownfields in certain poverty rated areas. Specifically, credits are available for redevelopment projects where a local government entity includes a census tract with poverty in excess of 20 percent, although the project need not be located within that tract.

H.R. 4480 also provides additional liability relief by allowing potential responsible parties that contribute at least 25 percent of the remediation costs to receive liability release for 100 percent of the approved remediation plan and demolition costs.

I plan to introduce this bill in the near future with a few key improvements. The revised bill will clarify the liability relief provisions, making clear that the relief is limited to the approved reme-

diation plan, while liability for other types of claims, such as liability to adjacent property owners or for outstanding health complaints, is unaffected. The bill also provides that an environmental remediation plan be approved by the State environmental agency.

The EPA's brownfields program has assisted a number of communities in brownfields assessment and cleanup. Stakeholders are appreciative of EPA's brownfields program, especially with the easing of the regulatory regime. However, when choosing between brownfields, grayfields and greenfields for development projects, it still comes down to a cost-benefit analysis. Unless we significantly address the cost of redevelopment and cleanup of these sites, the EPA's brownfield program will continue to affect only a few thousand sites, leaving a major gap and burdening many communities with land that cannot be redeveloped and that remain a blighting influence.

We have two panels of witnesses before us to help us understand the state of brownfields redevelopment efforts nationwide as well as the impact of the EPA's brownfields program, only 2 years into its statutory existence. We will also hear opinions from stakeholders on their ideas for improving and implementing the EPA's brownfields program in order to encourage more aggressive redevelopment.

First, we will hear from Mr. Thomas Dunne, the Deputy Assistant Administrator in the Office of Solid Waste and Emergency Response at the Environmental Protection Agency. Second, we will hear from Mr. John Stephenson, Director of the National Resources and Environment team at the Government Accountability Office.

The second panel of witnesses consists of representatives of the stakeholder community.

First, we will hear from the Honorable Don Plusquellic, Mayor of Akron, OH, on behalf of the U.S. Conference of Mayors. Mayor Plusquellic, I understand that you have a plane to catch, and I hope that you will be able to stay for at least a little portion of the questions and answers, but I certainly know that you will be excusing yourself and will not be able to stay for the rest of the hearing.

After Mayor Plusquellic's testimony, we will hear from Mr. James Maurin as chairman of the International Council of Shopping Centers and as a board member of the Real Estate Roundtable.

Rounding out our second panel, we will hear from Mr. Jonathan Philips, senior director of Cherokee Investment Partners, and Mr. Doug Steidl, president of the American Institute of Architects.

I look forward to the expert testimony that we have before us today on the panel of leaders that are present. I thank everyone for their time.

As a reminder for those who want to view this hearing, it is on our Web cast of reform.house.gov.

[The prepared statement of Hon. Michael R. Turner follows:]

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SUBCOMMITTEE ON FEDERALISM AND THE CENSUS
Congressman Michael R. Turner, Chairman

OVERSIGHT HEARING
STATEMENT BY MICHAEL R. TURNER, CHAIRMAN

Hearing topic: ***"Lands of Lost Opportunity: What Can Be Done to Spur Redevelopment at America's Brownfield Sites?"***

Tuesday, April 5, 2005
10:00 a.m.
Room 2154, Rayburn House Office Building

OPENING STATEMENT

Welcome to the Subcommittee on Federalism and the Census' oversight hearing entitled "Lands of Lost Opportunity: What Can Be Done to Spur Redevelopment at America's Brownfield Sites?"

In every community across this nation there are abandoned parcels of property marring the faces of our cities and towns. Behind rusted chain link fences are broken windows and crumbling buildings. Beneath the surface there are substances contaminating the local environment, robbing the communities in which they exist of new jobs and other economic opportunities.

There are an estimated 450,000 to 1 million of these parcels, known as brownfields, across our nation, contributing to community blight and thus lowering property values and decreasing tax revenues. These sites lay abandoned and unused due to federal environmental laws and regulations that encourage abandonment of contaminated property by creating disincentives for cleanup and redevelopment. Current federal law triggers liability for remediation of contaminated properties once landowners have knowledge of the contamination. If redevelopment begins and contamination is discovered, the owner may be liable for remediation costs. If an owner abandons the property without disturbing the contamination, remediation costs may be avoided. The net effect of these laws and loopholes is the encouragement of abandoning brownfields.

If we are to achieve our goal of restoring these properties to productive use, and redeveloping them into centers of economic and community vitality, we must craft a federal response to a federally created problem. We cannot leave brownfields and

abandoned factories as monuments to their once productive pasts. The redevelopment of brownfields will create jobs, new living and shopping options, and spur the improvement or development of transportation and infrastructure. If we make redevelopment of brownfields more attractive, we can also help reduce urban sprawl and save green space. In my hometown of the city of Dayton, Ohio, over 50 acres of land surrounding our downtown are brownfields that would attract jobs and spur economic expansion - if the city had assistance in addressing the environmental contamination from past use of the parcels.

In 2002, the President signed the Small Business Liability Relief and Brownfields Revitalization Act of 2001. While the law codified and secured independent appropriations for the EPA's brownfields program, the shining accomplishment of the Act was providing some relief from the daunting amount of potential liability for acquiring and attempting to redevelop a brownfield site. Specifically, the Act limits liability for owners of land that is contaminated by adjoining property as well as for prospective purchasers of known contaminated property. The Act also clarified the CERCLA "innocent landowner" defense and created additional liability relief by forbidding the federal government from intervening at sites being cleaned up under a state program except in certain circumstances. These are strong first steps in encouraging brownfields redevelopment and the Subcommittee looks forward to hearing from EPA on the effect the program and new liability relief has achieved in this field.

We also look forward to hearing from the Government Accountability Office. Last year, I, along with Chairman Tom Davis, requested that GAO study the status of brownfields redevelopment across the nation. GAO's report shows that stakeholders are generally positive about EPA's brownfields program but that additional incentives, such as a tax credit, are needed to spur further brownfields redevelopment and really make a difference in communities across the country.

Last year, I introduced H.R. 4480, the "Brownfields Revitalization Act of 2004" to address these two greatest impediments to redevelopment – liability and redevelopment costs. My bill proposed a tax credit of up to 50% for qualified remediation expenses of brownfields in certain poverty-rated areas. Specifically, credits are available to redevelopment projects where the local government entity includes a census tract with poverty in excess of 20%, although the project need not be located within that tract. H.R. 4480 also provides additional liability relief by allowing potentially responsible parties that contribute at least 25% of remediation costs to receive liability release for 100% of the approved remediation plan and demolition costs.

I plan to reintroduce this bill in the near future with a few key improvements. The revised bill will clarify the liability relief provisions, making clear that the relief is limited to the approved remediation plan while liability for other types of claims, such as liability to adjacent property owners or for outstanding health complaints, is unaffected. The bill also provides that an environmental remediation plan be approved by the state environmental agency.

The EPA's brownfields program has assisted a number of communities in brownfields assessment and clean up. Stakeholders are appreciative of the EPA's brownfields program, especially with the easing of the regulatory regime. However, when choosing between brownfields, grayfields, and greenfields for development projects, it still comes down to a cost-benefit analysis. Unless we significantly address the cost of redevelopment and clean up of these sites, the EPA brownfields program will continue to affect only a few thousand sites, leaving a major gap and burdening many communities with land that cannot be redeveloped and that remain a blighting influence.

We have two panels of witnesses before us to help us understand the state of brownfields redevelopment efforts nationwide as well as the impact of the EPA's brownfields program only two years into its statutory existence. We will also hear opinions from stakeholders on their ideas for improving or complementing the EPA brownfields program in order to encourage more aggressive redevelopment. First, we will hear from Mr. Thomas Dunne, the Deputy Assistant Administrator in the Office of Solid Waste and Emergency Response at the Environmental Protection Agency. Second, we will hear from Mr. John Stephenson, Director of the Natural Resources and Environment team at the Government Accountability Office.

The second panel of witnesses consists of representatives of the stakeholder community. First we will hear from the Honorable Don Plusquellic, Mayor of Akron, Ohio, on behalf of the U.S. Conference of Mayors. Mayor Plusquellic, I understand that you have a plane to catch. I hope that you will be able to stay for at least a portion of our Q&A session, but I certainly understand if you must excuse yourself earlier. Thank you for making time to speak with us today. After Mayor Plusquellic's testimony, we will hear from Mr. James Maurin as Chairman of the International Council of Shopping Centers and as a board member of The Real Estate Round Table. Rounding out our second panel, we will hear from Mr. Jonathan Philips as Senior Director of Cherokee Investment Partners and Mr. Doug Steidl, President of the American Institute of Architects.

I look forward to the expert testimony our distinguished panel of leaders will provide today. Thank you all for your time today and welcome.

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Mr. TURNER. I now recognize Ms. Foxx, if she has an opening statement.

Ms. FOXX. Mr. Chairman, I do not have any opening statement. Thank you.

Mr. TURNER. I appreciate you being here today.

We will now start with the witnesses. In this committee we do swear in our witnesses. If you gentlemen would stand and raise your right hands.

[Witnesses sworn.]

Mr. TURNER. Let the record show that all witnesses responded in the affirmative.

We will begin our testimony with Mr. Dunne, Deputy Assistant Administrator with the EPA.

STATEMENTS OF THOMAS DUNNE, DEPUTY ASSISTANT ADMINISTRATOR IN THE OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY; AND JOHN STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GOVERNMENT ACCOUNTABILITY OFFICE

STATEMENT OF THOMAS DUNNE

Mr. DUNNE. Thank you, Mr. Chairman and Ms. Foxx.

I am appearing today to discuss EPA's Brownfield program and address the recommendations made in the Government Accountability Office's report on brownfield redevelopment. I will summarize my statement, but I would also ask my statement be included in the record.

More than a decade ago, EPA identified a problem facing local communities in their efforts to develop properties that are contaminated or potentially contaminated by hazardous substances. The private and public sector were extremely hesitant to get involved in these sites, now known as brownfields.

Ten years ago, EPA began providing seed money through grants to local communities to inventory and assess contamination at brownfield properties. Congress also enacted legislation that provided tax incentives to promote private sector cleanup and development at brownfields. Over the years, EPA added grants to capitalize revolving loan funds for clean up. The Agency also provided job training grants to promote employment opportunities in brownfield communities.

Since EPA's initial efforts, States, tribes, local governments, and nonprofit organizations have begun to focus on brownfields cleanup and development. In the year 2002, President Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This new Brownfields Law broadened the reach of EPA's brownfield program and provided statutory liability protection to promote private sector participation in brownfields cleanup and development.

Under the new Brownfields Law, EPA can now award direct cleanup grants to public sector and nonprofit property owners. The new law also broadened the definition of what could be considered a brownfields property. EPA can now award its brownfields grants

for petroleum-contaminated properties, mine-scarred lands, and sites contaminated with controlled substances.

I am pleased to report that EPA's brownfields program has been able to produce significant results. As of March 2005, EPA and its grant recipients have performed more than 6,800 property assessments; and as of March 2005, brownfield grantees have leveraged $6.6 billion in cleanup and redevelopment dollars, which has also leveraged more than 30,000 jobs.

The public investment in brownfields has proven to be a wise investment. Studies show that for every public dollar spent on brownfields cleanup and redevelopment, $2.50 is leveraged in private investment.

One thing is clear, that, notwithstanding all the efforts of Federal, State and local governments, we will never be able to clean up the many hundreds of thousands of brownfield properties scattered throughout our country without the funding and know-how of the private sector.

I would like to take a minute now to comment on the GAO report.

EPA agrees with GAO that more had to be done to develop additional measures to quantify brownfields program accomplishments. EPA has developed a new data collection mechanism, the Property Profile Form, to collect information from site assessment, cleanup and revolving loan fund grantees. Further, a nationwide data collection effort is under way that will collect data from the years 2003 and 2004 grantees. We believe that this new data will enable EPA to tie program results with property-specific activities to better gauge brownfields program progress.

EPA is also working with State and tribal officials to develop performance measures to gauge the impact of the EPA's funding on the results produced by their voluntary cleanup programs. The performance measures will tie performance to the number of acres cleaned up and made ready for reuse or anticipated reuse.

In addition, EPA agrees with GAO that more efforts are needed to monitor revolving loan fund grants to determine why they have been underutilized. EPA is committed to improving revolving loan fund performance and ensuring that, if grant funds are not being used, those grant funds will be closed out or grantees will be required to transition old loan fund grants to the new Brownfields Law program authority. To that end, I issued a memorandum to EPA regions in September 2004 to contact revolving loan fund grantees and request that they transition or close out old loan funds.

Mr. Chairman, that completes my statement. I will be pleased to answer any questions that you and other members of the subcommittee have.

Mr. TURNER. Thank you.

[The prepared statement of Mr. Dunne follows:]

STATEMENT OF THOMAS P. DUNNE
DEPUTY ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON
FEDERALISM AND THE CENSUS
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 5, 2005

INTRODUCTION

Good morning, Mr. Chairman, and members of the Subcommittee. My name is Tom Dunne. I am Deputy Assistant Administrator for EPA's Office of Solid Waste and Emergency Response. I am appearing today to discuss EPA's Brownfields Program and address the recommendations made in the Government Accountability Office (GAO) Report to Congressional Requesters entitled "Brownfield Redevelopment: Stakeholders Report that EPA's Program Helps to Redevelop Sites, but Additional Measures Could Complement Agency Efforts."

Brownfields are all around us, in the smallest towns and largest cities -- empty warehouses, decrepit factories, vacant corner gas stations, and junk-strewn lots. Brownfields are defined by statute as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant." In other words, properties where environmental concerns are a barrier to reuse. Estimates of the number of brownfields across the country range from 450,000 to more than a million properties.

Ten years ago, EPA initially provided seed money to communities for inventorying brownfields and assessing contamination. In response to community requests, additional tools

were added to the brownfields' effort. Grants were made to capitalize revolving loan funds for cleanup. Brownfields job training grants were developed to promote employment in brownfields communities. A tax incentive was enacted to encourage private sector investment. States, Tribes, local governments and non-governmental organizations began to focus on brownfields, creating local and regional approaches to revitalizing properties.

The national brownfields effort has produced successful results. As of March 2005, EPA and its grant recipients have performed more than 6,800 assessments. Brownfields grantees have leveraged $6.6 billion in cleanup and redevelopment dollars, leveraging more than 30,000 jobs. Brownfields have proven to be a good public investment, with every public dollar spent on brownfields leveraging about $2.50 in private investment. Brownfields revitalization also produces long-term sustainability benefits, with every acre of brownfields reused saving 4.5 acres of greenspace. The brownfields initiative has become a national effort, linking environmental protection, economic development and community revitalization.

Congressional support of brownfields cleanup and redevelopment culminated in the passage of the Small Business Liability Relief and Brownfields Revitalization Act, also known as the Brownfields Law. Signed by President Bush on January 11, 2002, the Brownfields Law provided EPA with a clear Congressional mandate on brownfields. The Brownfields Law expanded EPA's Brownfields Program, boosted funding levels, expanded the entities, properties and activities eligible for funds, clarified and strengthened liability protection for certain property owners and provided increased support to state and tribal response programs.

EPA has taken great efforts to implement the new law. EPA developed and published guidelines for the many new grant programs for assessment, revolving loan fund and cleanup

grants; state and tribal response program grants; and, research, training and technical assistance grants. These new programs required application guidelines, funding competitions and selection processes -- and they were completed and grants awarded in the first fiscal year following the passage of the new law. EPA has awarded more than 480 brownfields grants in both FY2003 and FY2004 totaling more than $145 million.

EPA'S BROWNFIELDS PROGRAM

Brownfields Grants

I would like to describe the Brownfields Program components in greater detail. Assessment grants provide funding to inventory, characterize, assess, conduct planning and community involvement related to brownfields. Environmental site assessments provide the information that communities and property owners need to move forward with reuse. In fact, up to one third of the sites assessed show little or no contamination, freeing the site for redevelopment through a relatively small public investment. Over the years, EPA has awarded hundreds of assessment grants, generally $200,000 each, to communities large and small. The Brownfields Law expanded the eligibility to new entities such as redevelopment authorities and allowed additional assessment-related activities such as planning to be done by grant recipients. Over the past two years under the new law, EPA has awarded 270 assessment grants for $67.9 million.

In addition, EPA has the authority to provide Targeted Brownfields Assessments. These single-property assessments are designed to help communities on a more direct basis, especially those lacking EPA assessment grants. EPA provided $6.6 million for Targeted Brownfields Assessment in fiscal years 2003 and 2004.

Under its new authority, EPA may now provide direct cleanup grants of up to $200,000 per site to public sector and non-profit property owners. In the past two years, EPA has awarded 143 cleanup grants for $25.5 million. In Buffalo, New York, a non-profit developer is using a Brownfields Cleanup Grant to cleanup the Union Ship Canal property, an old iron production facility contaminated with hazardous waste and petroleum. Working closely with EPA Region 2 and the State of New York, Development Downtown has already completed cleanup and is moving forward to reuse.

The Brownfields Program also supports property cleanup by providing grants to capitalize cleanup revolving loan funds. The Brownfields Revolving Loan Fund grants provide state and local governments with capital to make sub-grants or low or no interest loans to finance brownfields cleanup. Over the past two years, EPA has awarded 43 revolving loan fund grants for $47.3 million.

Recently, a successful collaboration occurred with one of our early revolving loan fund grants to Aurora, Colorado. The City made a loan of $471,000 that is now being combined with a subgrant for approximately $100,000 from the Colorado Coalition revolving loan fund. The Colorado Coalition is made up of five cities and two state agencies. They are using the initial loan and the subgrant for a landfill cleanup and planned redevelopment will include additional park space for the City of Aurora as well as low and middle income housing.

The Union Ship Canal project points to another feature of EPA's brownfields authority, the eligibility to cleanup sites contaminated with petroleum, a major portion of the brownfields universe. The Brownfields Law directs 25% of assessment and cleanup grant funding be directed to sites with petroleum contamination. Indeed, since passage of the law, EPA has

awarded 212 assessment, cleanup and revolving loan fund grants totaling $44.8 million for petroleum contaminated brownfields.

The Brownfields Law also broadened the definition of what could be considered a brownfield, thus making eligible for grants, mine-scarred lands and sites contaminated by controlled substances (often these sites are drug labs found in residential areas). We have seen an increased number of proposals from states, tribes and communities working on these kinds of sites.

In reviewing proposals and awarding grants, EPA has found that brownfields come in a range of sizes and types. Brownfields are often stereotyped as large industrial sites in urban areas. The reality is that the majority of brownfields are small properties like dry cleaners, vacant lots and gas stations. More than half of the grants have gone to communities of less than 100,000 people.

The grant selection and award process for fiscal year 2005 is currently underway. The application deadline was November 12, 2004 and we received more than 500 applications. The proposals are under review and we anticipate announcing more than 200 new grants later this Spring.

In addition to assessment and cleanup funding, EPA also funds brownfields training, research and technical assistance. As communities engage in cleaning up of brownfields, EPA recognizes the need for a workforce with environmental cleanup skills. To date, EPA has awarded 82 job training grants, including 26 grants since passage of the law, resulting in the placement of more than 1400 individuals with an average wage of $13.00 an hour.

State and Tribal Programs

The high demand for brownfields cleanup and redevelopment in communities throughout the country, coupled with increasingly limited state and tribal resources, makes access to federal funding critical. The development of successful state and tribal programs is essential to insuring the successful implementation of the brownfields program, since they are the environmental regulators of brownfields cleanups.

Under section 128(a) of the Brownfields Law, EPA provides financial assistance to establish or enhance state and tribal programs so they can meet the challenges of brownfields cleanup and redevelopment. In fiscal year 2004, EPA provided $49.7 million to all 50 states, 37 tribes, the District of Columbia, and 3 territories (Guam, U.S. Virgin Island, and the Northern Mariana Islands). This funding is helping states and tribes to develop or enhance their response programs' infrastructure and capabilities.

For some recipients, the funding provides an opportunity to create new response programs to address contaminated properties. States and tribes also can use the funds to capitalize a revolving fund for cleanup, purchase environmental insurance, or develop other insurance mechanisms to provide financing for cleanup activities. In addition, the funds can be used to establish or maintain the statutorily required public record, to oversee cleanups, and to conduct limited site-specific activities. Providing financial assistance to states and tribes increases their capacity to meet brownfields cleanup and redevelopment challenges. It also helps to ensure that properties are cleaned up safely, in accordance with state and tribal standards.

EPA also partners with states to develop Memoranda of Agreement (MOAs) that clarify program roles and responsibilities. EPA has signed 22 MOAs and is working on additional new and expanded MOAs.

Liability Protection

A final element of the Brownfields Program focuses on providing landowner liability protections. These protections increase comfort and certainty regarding the purchase and redevelopment of brownfields. EPA has worked to clarify federal liability, particularly under CERCLA. EPA has streamlined administrative practice and issued guidance and enforcement discretion policies to encourage brownfields cleanup and redevelopment. For example, EPA has used liability management tools such as "comfort/status" letters and prospective purchaser agreements that help provide the certainty that lenders, investors and developers need to overcome the liability concerns.

The Brownfields Law provides additional landowner liability provisions that protect bona fide prospective purchasers, innocent landowners and contiguous property owners from CERCLA liability. To qualify for liability protection, these property owners must satisfy certain statutory requirements. For example, prior to acquiring a property, purchasers must meet environmental due diligence requirements by undertaking "all appropriate inquiries" into the condition of the property. EPA is developing a regulation establishing standards for conducting "all appropriate inquiries." The Agency did this through a collaborative stakeholder negotiated rulemaking. The proposed rule was published in August 2004 and the Agency is currently evaluating comments submitted with the expectation that a final rule will be published in January 2006.

To achieve and maintain their liability protections, property owners must comply with continuing obligations, including taking "reasonable steps" with regard to contamination at the site. EPA issued policies and guidance documents explaining how EPA intends to implement

the landowner liability protections, in order to provide additional certainty and understanding of the issue.

The Brownfields Law also provides federal CERCLA liability protection for parties who conduct a cleanup of certain brownfields properties under state response programs. EPA issued guidance that explained which properties currently in the CERCLA system would be eligible for federal liability protection.

EPA's RESPONSE TO GAO'S RECOMMENDATIONS

Performance Measures

GAO recommended EPA continue to develop additional measures to gauge the achievements of the Brownfields program. Since the initial pilots awarded prior to the law, EPA has collected data from its grant recipients and sought ways to use that data to evaluate the impact of the program and assess the successes and achievements of the program at brownfields sites nationwide.

Building on our past experience, EPA's Strategic Plan for FY 2003-2008 focuses on the: (1) assessment, clean up and redevelopment of sites; (2) leveraging of brownfields grant funding in cleanup and redevelopment funding; (3) leveraging the creation of both temporary and permanent jobs; and, (4) the number of properties cleaned up and the number of acres available for reuse.

To enhance EPA's ability to develop more meaningful measures of Brownfields program accomplishments, the Agency:

- developed a data collection instrument – a Property Profile Form – to collect information from site assessment, cleanup and revolving loan fund grant recipients. A nationwide data collection effort is underway that will collect data from 2003 and 2004 brownfields grantees. We believe that effective and continuing use of the Property Profile Form will enable us to better tie program results to property-specific activities and gauge the progress of the brownfields program;
- works with State and Tribal officials to develop performance measures gauging the impact of EPA funding on the results of state and tribal voluntary cleanup programs. This ongoing work on measures ties performance to the number of acres available for reuse and anticipated reuse; and
- works with the Office of Management and Budget to develop measures addressing the Program Assessment and Rating Tool review. This ongoing effort with OMB is designed to provide EPA with a way to reflect the changes that occur at a specific property following the award of a brownfields grant.

As EPA moves forward to collect additional information on the results of brownfields activities, we are mindful of the data quality issues that accompany the collection of such data. To that end, EPA is also addressing ways to minimize the impact of these information requests and reporting requirements on recipients while helping us to fully realize and accomplish our program goals.

Legislation

GAO recommended that EPA weigh the merits of revising the Brownfields Law to eliminate statutory restrictions on pre-January 2002 eligibility of purchasers of brownfields property. EPA has requested a change to expand the number of brownfields sites eligible for funding under the Brownfields Assessment, Revolving Loan Fund and Cleanup grant provisions in the President's FY 2006 Budget. EPA has supported similar changes in the Consolidated Appropriations Act of Fiscal Years 2004 and 2005. Such a measure expands potential applicants for brownfields grants to include those owning properties acquired prior to the enactment of the Brownfields Law.

Revolving Loan Fund

GAO recommended closely monitoring Brownfields Revolving Loan Fund grants to determine why they have been underutilized and to encourage changes to facilitate use of these funds. In addition, GAO recommended determining the advantages and disadvantages of giving priority to coalitions and other entities with proven revolving fund administrative expertise when awarding grants and, if found to be beneficial, adopt this as a key criterion for selecting grant recipients.

In looking at Revolving Loan Fund grants, EPA acknowledges GAO's recommendation which is, in part, the result of stakeholder interviews. Managing a revolving loan fund successfully requires a unique confluence of skills which include both loan and grant management to ensure that loans are in accord with prudent lending practices and environmental expertise. The Revolving Loan Fund program requires financial, analytical, legal and record keeping activities as well as the skills to market such loans and subgrants. The other important focus, however, is the ability of a grantee to ensure that cleanup planning and execution under a loan or subgrant ensures protection

of human health and the environment. We agree that efficiency and economies of scale often can be achieved by Revolving Loan Fund entities with proven track records that build upon administrative expertise. To date, EPA has invited coalitions of eligible entities to pool their Revolving Loan Fund grant requests and submit a single grant application for consideration. EPA is also adjusting ranking criteria for Revolving Loan Fund applicants, giving more weight to ranking factors which demonstrate an applicant's ability to manage a fund and make loans.

EPA also agrees with the recommendation that EPA closely monitor the Brownfields Revolving Loan Fund grants to determine if they have been underutilized and what, if any, changes are needed to facilitate or encourage grant recipients' use of these funds. As part of an on-going Agency effort, regional and headquarters staff regularly close out brownfields grants. In the case of the Brownfields Cleanup Revolving Loan Fund grants awarded prior to passage of the Brownfields Law, pre-existing grants can transition to the new law's authority. To encourage either closeout or transition of these older Brownfields Cleanup Revolving Loan Fund grants, I advised EPA regions in a September 2004 memorandum to request 1997, 1999, and 2000 grant recipients to choose to transition or become subject to closeout.

This memorandum was followed by further communication to the regions in October 2004, providing each region with region-specific brownfield grant information on grants which might be candidates for closeout. The Brownfields Program's tracking of grant closeouts is ongoing. EPA prepared a report for Congress in September 2004 which detailed activity regarding the Revolving Loan Fund grants and addressing GAO's concerns.

CONCLUSION

EPA's Brownfields Program serves as an innovative approach to environmental protection, spurring environmental cleanup, reducing neighborhood blight, generating tax revenues, and creating jobs. It has become increasingly clear, however, that successfully addressing brownfields in this country will require ever more interaction and collaboration among all levels of government, the private sector and non-governmental organizations.

As GAO's report indicates, we must continue to take every opportunity to improve the Brownfields Program. EPA is fully committed to seeing that the GAO report's recommendations are addressed. EPA will continue to implement the program to protect human health and the environment, enhance public participation in local decision-making, build safe and sustainable communities through public and private partnerships, and recognize that environmental protection can be the engine that drives economic redevelopment.

Mr. TURNER. Mr. Stephenson.

STATEMENT OF JOHN STEPHENSON

Mr. STEPHENSON. Mr. Chairman, thank you for this opportunity to discuss our report and recommendations on EPA's brownfields program. The report, as you know, was issued to you and Chairman Davis on December 2004.

Over half a million brownfield sites, such as former industrial properties, gas stations and warehouses, sit abandoned or unused across the country. These sites have remained undeveloped for a number of reasons, including uncertainty about contamination, limited resources and fear of liability for cleanup costs. Cleaning up and redeveloping these sites cannot only protect human health and the environment but also improve local tax bases and encourage smart growth by slowing development of open land.

While EPA has the lead Federal role in encouraging brownfields development, other Federal agencies, State and local governments, commercial lending institutions and real estate developers also fund activities to help redevelop brownfields. EPA provides grants that support efforts to assess, clean up and redevelop properties, help create jobs through new economic development and leverage cleanup and redevelopment funding from other sources. While the total amount of EPA's grant funds is small, about $400 million since the program began, this investment is intended to leverage more than $10 billion in investments from other sources.

In developing our report, we spoke to numerous grant recipients, State and local government officials, real estate developers and other stakeholders, and they all agreed that EPA's program provides an important contribution to brownfields cleanup and redevelopment. According to them, EPA grants often provide seed money during the initial stages of brownfields redevelopment for activities such as identifying the extent of contamination and estimating the cleanup costs that private lenders typically will not fund.

Stakeholders also said that EPA grants support redevelopment of sites with complex cleanup requirements, less desirable locations or liability issues, sites that might not be redeveloped if left to normal market forces. In addition, State officials told us that EPA grants have been crucial to establishing and expanding the scope of their programs to encourage voluntary cleanup of brownfield properties.

While stakeholders generally praised the EPA's program, we believe that the Agency could do a better job in providing to the Congress more useful information on the program's accomplishments, information needed to determine whether the program is in fact achieving its goals. For example, EPA does not currently report program results like the number of acres cleaned up or the impact of grants to States for their voluntary cleanup programs.

Finally, stakeholders identified three options to improve or compliment EPA's brownfield program.

First, they suggested eliminating the provision of the brownfield act that makes landowners who purchased the brownfields property before January 2002 ineligible for grants. Stakeholders strongly believe that this clause discourages brownfields redevelopment by limiting the number of potential grant recipients.

Second, grant recipients and other stakeholders suggested changes to expand the use of EPA's revolving loan funds. As of November 2004, States had loaned out about $29 million or only about 17 percent of the $168 million provided for this purpose. According to stakeholders, the stringent technical and administrative requirements to establish a revolving loan fund have discouraged its use.

Additionally, stakeholders believe that EPA could achieve greater results by giving priority to applicants with proven administrative expertise or to coalitions of agencies that could consolidate administrative functions. This could produce economies of scale by spreading the up-front administrative costs associated with setting up a fund over a greater number of loans.

Third, stakeholders supported a brownfield tax credit allowing developers to offset a portion of their Federal income tax with cleanup expenditures. Grant recipients, developers and other groups with brownfield expertise generally agree that such a tax credit could attract developers to brownfield sites on a number of national issues. I am sure you will hear more about these stakeholder ideas on your second panel.

To enhance Federal efforts to support brownfields redevelopment, we recommended in our December 2004, report to you that EPA, one, develop additional performance measures to gauge program achievements; two, weigh the merits of revising the eligibility date provisions of the brownfield act; three, monitor and determine why revolving loan funds have been underutilized; and, four, consider giving priority to entities with revolving loan fund expertise when awarding these grants. And, as you have heard, EPA agreed with our recommendations and is taking actions to implement them.

Mr. Chairman, that concludes my summary; and I will be happy to answer questions as well.

Mr. TURNER. Thank you.

[The prepared statement of Mr. Stephenson follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Federalism and the Census, Committee on Government Reform, House of Representatives

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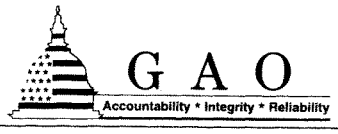
BROWNFIELD REDEVELOPMENT

Stakeholders Cite Additional Measures That Could Complement EPA's Efforts to Clean Up and Redevelop Properties

Statement of John B. Stephenson, Director
Natural Resources and Environment



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Highlights

Highlights of GAO-05-450T, a testimony before the Subcommittee on Federalism and the Census, Committee on Government Reform, House of Representatives

BROWNFIELD REDEVELOPMENT

Stakeholders Cite Additional Measures That Could Complement EPA's Efforts to Clean Up and Redevelop Properties

Why GAO Did This Study

Brownfields are properties whose re-use may be hindered by the threat of contamination. Cleaning up and redeveloping these properties can protect human health and the environment, and provide economic benefits. The Environmental Protection Agency (EPA) provides grants to state and local governments and others for site assessments, job training, revolving loans, cleanups, and for assisting state efforts.

This testimony is based on GAO's report, *Brownfield Redevelopment: Stakeholders Report That EPA's Program Helps to Redevelop Sites, but Additional Measures Could Complement Agency Efforts* (GAO-05-94, December 2, 2004). GAO (1) obtained stakeholders' views on EPA's contribution to brownfield cleanup and redevelopment, (2) determined the extent to which EPA measures program accomplishments, and (3) obtained views on options to improve or complement EPA's program. Stakeholders GAO surveyed included grant recipients, state program officials, interest groups, real estate developers, and others.

What GAO Recommends

GAO's report recommended that EPA develop additional measures of the Brownfields Program's achievements and consider stakeholder suggestions for improving and complementing the program. EPA agreed with the report's recommendations and has begun steps to implement them.

www.gao.gov/cgi-bin/getrpt?GAO-05-450T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact John B. Stephenson at (202) 512-3841 or stephensonj@gao.gov.

What GAO Found

Stakeholders said that EPA's Brownfields Program supports the initial stages of site redevelopment by funding activities that other lenders often do not, such as identifying contamination and cleaning up sites. While important, the impact of EPA's funding is difficult to isolate because it is often combined with funds from other sources. For example, representatives of a company that combined an EPA loan with city, state, and other federal agency funds to redevelop a brownfield site near Seattle, Washington, said that EPA's loan, while small, provided critical up-front funds for cleanup. Furthermore, while an unknown number of projects rely solely on private and other federal agencies' funding, EPA funds often go to sites with more complex cleanups, less desirable locations, or liability issues. In addition, officials in 10 states reported that EPA's assistance has been crucial to establishing and expanding the scope of their voluntary cleanup programs.

EPA's performance measures have provided information on achievements in some but not all key areas of the Brownfields Program. For example, EPA has not yet begun reporting data on progress toward cleaning up and redeveloping sites or assisting state programs. As a result, the agency's—and the Congress'—ability to determine the extent to which the program is achieving its goals is limited. Furthermore, EPA has not yet developed measures to assess the extent to which the Brownfields Program achieves key outcomes, such as reducing environmental risks. Similarly, EPA's Inspector General found that the agency's performance measures do not demonstrate the program's contribution to reducing or controlling health and environmental risks. After acknowledging the limitations of the program's performance measures, in fiscal year 2004, EPA began collecting additional data—such as the number of acres ready for reuse—about properties under the program and is developing performance measures for state voluntary cleanup programs.

Stakeholders identified three options for improving or complementing EPA's Brownfields Program. First, they suggested eliminating the provision in the Brownfields Act that, in effect, disqualifies from grant eligibility those landowners who purchased a brownfield site before January 2002. Second, they suggested changes to the stringent technical and administrative requirements that they believe have discouraged the use of revolving loan funds. While EPA officials maintain that the act eased administrative burdens, stakeholders believe that technical requirements continue to impede lending. Stakeholders also suggested that EPA give priority to applicants with proven administrative expertise or to coalitions that can consolidate administrative functions. Third, stakeholders believed that a federal tax credit for developers' remediation costs could attract developers to brownfields sites on a broader national basis. Although EPA and other organizations were also generally supportive of a tax credit, we did not analyze the costs and benefits of such a tax credit or any other potential incentives.

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to discuss our work on EPA's Brownfields Program and potential options for enhancing brownfield redevelopment efforts. As we reported in December 2004, an estimated 450,000 to 1 million brownfields—sites whose redevelopment or reuse may be complicated by the presence or potential presence of hazardous substances—sit abandoned or underused across the country.[1] These sites have remained undeveloped for several reasons, including uncertainty about the presence of contamination, limited cleanup resources, and fear by the sites' owners or prospective purchasers that they might be held liable for cleaning them up. Cleaning up and redeveloping these properties can improve and protect human health and the environment; increase local tax bases; and encourage smart growth by slowing the development of undeveloped, open land. The Environmental Protection Agency (EPA) has the lead federal role in encouraging and facilitating the cleanup and redevelopment of brownfield sites. In addition, state and local governments, commercial lending and real estate development corporations, and other entities provide funding for brownfields redevelopment—both with and without EPA's participation.

While EPA has conducted brownfield efforts since 1995, the Congress established a formal Brownfields Program within EPA in January 2002, by passing the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Act) (Pub. L. No. 107-118). The objectives of EPA's Brownfields Program are to assess, clean up, and redevelop properties; leverage job creation; and leverage cleanup and redevelopment funding from other sources. The Brownfields Act authorizes $200 million annually for fiscal years 2002 through 2006, to fund EPA grants to state and local governments and others for site assessments, job training, revolving loans, and newly created cleanup grants in support of brownfield revitalization efforts.[2] Between fiscal years 1995 and 2004, EPA awarded over 1,200

[1]GAO, *Brownfields Redevelopment: Stakeholders Report That EPA's Program Helps to Redevelop Sites, but Additional Measures Could Complement Agency Efforts*, GAO-05-94 (Washington, D.C.: December 2, 2004).

[2]EPA's site assessment grants provide funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. EPA also awards brownfields job training grants to provide environmental training for residents of brownfields communities. EPA's revolving loan fund grants provide funding for recipients to make no- or low-interest loans or subgrants for brownfields cleanup. EPA also awards cleanup grants that provide direct funding for a recipient to address contamination at brownfield sites.

brownfield grants totaling about $400 million. While the total amount of EPA's grant funds is relatively small, these grants are intended to leverage much larger amounts for brownfield cleanup and redevelopment from other sources. For example, EPA's objective is to leverage $10.2 billion in cleanup and redevelopment funding from fiscal years 2003 through 2008. In addition, the act authorizes $50 million in grants to assist states and tribes in developing and enhancing their environmental response—or voluntary cleanup—programs to address contaminated sites. Since fiscal year 2003, EPA has awarded about $100 million in assistance to states and tribes.

My remarks today are based on our December 2004 report on brownfield redevelopment and will focus on (1) the views of stakeholders—including EPA grant recipients, state and local government officials, real estate developers, interest groups, and others—on the extent to which EPA's program has contributed to the cleanup and redevelopment of brownfields; (2) the extent to which EPA measures its brownfields program accomplishments; and (3) stakeholders' views on potential options for improving or complementing EPA's program.

For our report, we interviewed officials in EPA's Office of Brownfields Cleanup and Redevelopment, and other EPA offices; representatives of industry groups and associations with brownfields expertise; eight recipients of EPA site assessment, revolving loan, or job training grants in Colorado, Florida, Minnesota, and Washington State; other local stakeholders in these states, such as real estate developers, property owners, attorneys, nonprofit organizations, and other state and local government officials; and voluntary cleanup program officials in these four states as well as Alabama, Alaska, Kentucky, Virginia, West Virginia, and Wyoming. Although we did not identify a sample of stakeholders that would allow us to generalize our findings to the total population, our methodology enabled us to obtain a wide range of views on EPA's program and brownfield issues.

Summary

In summary, we found the following:

- Stakeholders reported that EPA's Brownfields Program provides an important contribution to site cleanup and redevelopment by funding activities that might not otherwise occur. According to these stakeholders, EPA grants are important in that they fund activities in the initial stages of brownfield redevelopment and address sites—such as those with more complex cleanup requirements, less desirable locations, or liability or

ownership issues—that private lenders and others often do not. In this regard, EPA's site assessment grants provide seed money for identifying contamination and estimating cleanup costs, while its revolving loan fund grants support cleanup activities. While important, the impact of EPA's funding is difficult to isolate because it is often combined with funds from other sources. All of the grant recipients we interviewed used EPA grants in conjunction with funding from other sources to address brownfield sites, but an unknown number of projects are under way or have been completed without any EPA funding. Furthermore, officials in all 10 of the states we contacted reported that EPA assistance has been crucial to establishing and expanding the scope of their voluntary cleanup programs. They said that without EPA's grants, their voluntary cleanup programs would not have had the resources to undertake activities such as compiling state inventories of brownfield sites and performing site assessments.

- The measures that EPA has used to date to gauge Brownfields Program accomplishments have provided information on achievements in some but not all key areas of the program. As a result, the agency's—and the Congress'—ability to determine the extent to which the program is achieving its goals is limited. First, while EPA has reported the cumulative number of sites assessed, jobs generated, and amounts of cleanup and redevelopment funds leveraged by the program, the agency has not begun reporting data on grant recipients' activities to clean up and redevelop properties—one of its primary stated objectives. Second, EPA does not collect data on its assistance to state voluntary cleanup programs for such activities as compiling inventories of brownfield sites, performing site assessments, and developing guidance for program participants. This assistance accounted for about one-third of the total Brownfields Program funds in each of fiscal years 2003 and 2004. Third, although EPA's overall mission is to protect human health and the environment, the agency has not yet developed measures to determine the extent to which the Brownfields Program helps reduce environmental risks. Acknowledging these limitations, EPA began collecting additional information—such as the number of acres ready to be reused—in fiscal year 2004, and is developing performance measures for voluntary cleanup programs.

- Stakeholders identified three potential options for improving or complementing EPA's Brownfields Program:

  - First, they suggested eliminating the provision in the Brownfields Act that, in effect, makes landowners who purchased a brownfield site prior to January 2002, ineligible for EPA grant funding. Stakeholders asserted that this clause continues to discourage brownfields

redevelopment by limiting program eligibility.

- Second, stakeholders suggested changes to address the underutilization of revolving loan funds. As of November 2004, grant recipients had loaned out less than $29 million (about 17 percent) of the $168 million in revolving loan fund grants awarded by EPA. According to stakeholders, the stringent technical and administrative requirements to establish a revolving loan fund have discouraged grant recipients from using the funds and continue to be the primary impediments to making loans. Additionally, stakeholders believed that EPA could achieve greater results by giving priority to applicants with proven administrative expertise or to coalitions of agencies that could consolidate administrative functions associated with establishing and managing a revolving loan fund and thereby produce economies of scale.

- Third, stakeholders believed that a federal tax credit allowing developers to offset a portion of their federal income tax with their remediation expenditures could complement EPA's program by attracting developers to brownfields sites on a broader national basis. While EPA and other organizations with brownfields expertise were also generally supportive of a federal brownfields tax credit, we did not analyze the costs and benefits of such a tax credit or any other potential incentives.

To enhance federal efforts to support brownfield clean up and redevelopment, we recommended in December 2004 that the Administrator of EPA:

- develop additional measures to gauge the achievements of the Brownfields Program, especially those addressing the program's environmental and state voluntary cleanup aspects;

- weigh the merits of revising the Brownfields Act to eliminate the provision that prevents pre-January 2002 purchasers of brownfield properties from qualifying for EPA grant funds, and, if deemed appropriate, develop a legislative proposal to amend the act;

- monitor the brownfield revolving loan fund grants to determine why they have been underutilized and what, if any, changes are needed to facilitate use of these funds; and

- determine the advantages and disadvantages of giving priority to entities with revolving loan fund administrative expertise when awarding grants

and, if found to be beneficial, adopt this as a key criterion for selecting grant recipients.

EPA agreed with these recommendations and Brownfields Program officials told us that, since December 2004, the agency has taken a number of steps to address them. With regard to measuring program achievements, EPA is finalizing a data collection instrument that will allow the agency to incorporate the achievements of state voluntary cleanup programs into the measures it currently reports, such as the number of sites assessed. Brownfields Program officials also told us that they are working with other EPA program offices to measure and report the cumulative acres cleaned up through the agency's overall land revitalization efforts as an indicator of the agency's efforts to reduce environmental risks. Concerning our recommendation on the Brownfields Act's eligibility provision, rather than developing a legislative proposal to amend the act, EPA included language in its fiscal year 2006 budget request that, if enacted, would make pre-January 2002 purchasers of brownfield properties eligible for EPA grant funds.

In response to our recommendations on revolving loan fund grants, EPA continues to monitor revolving loan grant activity and "deobligate" grants to recipients who are not lending the funds, according to program officials, thereby making these funds available for other grants. These officials also said that the agency has bolstered its efforts to ensure that revolving loan fund grants are awarded to recipients with the expertise necessary to administer a fund and, in fiscal year 2006, will reevaluate and consider strengthening grant proposal criteria assessing applicants' ability to manage a fund. Finally, EPA officials told us that the agency awards noncompetitive supplemental funding to some revolving loan fund grant recipients that have demonstrated their administrative expertise.

Background

EPA began its efforts to address brownfield properties in 1995 with the Brownfields Initiative under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was enacted in 1980 in the wake of discoveries of abandoned hazardous waste sites around the country. CERCLA authorizes EPA to compel parties responsible for the contamination to clean up hazardous waste sites; allows EPA to pay for the cleanups, then seek reimbursement from the responsible parties; and established a trust fund to help EPA pay for cleanups and related program activities. Under CERCLA, past and present owners and operators of hazardous waste sites, as well as generators and transporters of the hazardous substances, can all be held liable for cleanup costs. CERCLA

establishes a defense to liability for innocent landowners—that is, owners who obtain property without knowing it was contaminated despite conducting "all appropriate inquiries" regarding the present and past uses of the property and the potential presence of onsite contamination.

Under its Brownfields Initiative, EPA awarded several types of grants in support of brownfields redevelopment, including, among others:

- site assessment grants, which provide funding to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites; and
- revolving loan fund grants, which provide funding for recipients to make no- or low-interest loans for brownfields cleanup.

On January 11, 2002, the Congress amended CERCLA by passing the Brownfields Act. The act formally established EPA's Brownfields Program and amended the criteria for establishing the innocent landowner defense. It also limits liability for two types of parties: (1) contiguous property owners—persons who own property that may be contaminated by a release of hazardous substances from a neighboring property—and (2) bona fide prospective purchasers—persons who purchased the property after the act's passage on January 11, 2002; did not contaminate the property; and exercised appropriate care with respect to any hazardous waste found on the property. Both types of parties must demonstrate that they conducted all appropriate inquiries into the site's previous ownership and use.[3] Under the act, any landowner who acquired a potentially contaminated property before January 11, 2002, is not eligible for the bona fide prospective purchaser exemption and accordingly may not be eligible for brownfields grants. Among other things, the act authorizes EPA to continue awarding site assessment, revolving loan fund, and job training grants; authorizes new cleanup grants up to $200,000 to be used directly for brownfields remediation; and allows a portion of revolving loan fund

[3]In August 2004, EPA proposed a rule that would establish specific requirements and standards for conducting all appropriate inquiries into the previous ownership, uses, and environmental conditions of a property for the purposes of qualifying for CERCLA liability protection.

grants to be directed to cleanup activities as subgrants that do not have to be repaid, in accordance with certain statutory restrictions.[4]

Brownfield grants are currently awarded competitively by regional panels that evaluate grant proposals against threshold eligibility criteria and by a national panel that scores and ranks proposals on broader criteria. EPA has awarded over 1,200 brownfields grants totaling about $400 million since 1995. Table 1 shows the number of grants and the amount (in nominal dollars) awarded for each grant type between fiscal years 1995 and 2002 (when the Brownfields Act was passed), and during fiscal years 2003 and 2004.

Table 1: Number and Amount of Brownfield Grants Awarded

Dollars in millions

	Fiscal years 1995[a] through 2002		Fiscal year 2003		Fiscal year 2004[b]	
Grant type	**Number of grants**	**Amount**	**Number of grants**	**Amount**	**Number of grants**	**Amount**
Site assessment	437	$103.1	117	$30.7	155	$37.6
Revolving loan fund	143	117.0	28	30.4	18	20.9
Cleanup	N/A	N/A	66	11.4	92	16.9
Job training	57	12.1	10	2	16	2.5
Other[c]	97	14.4	-	-	-	-
Total	**734**	**$246.6**	**221**	**$74.5**	**281**	**$77.9**

Source: GAO analysis of EPA data.

[a]EPA awarded one site assessment grant in 1993, and two site assessment grants in 1994, as pilot tests for its Brownfields Initiative.

[b]Fiscal year 2004 numbers and amounts are for grants announced, not awarded. A small number of these grants may have been awarded after the end of fiscal year 2004, according to EPA officials.

[c]This category includes other types of grants awarded prior to the Brownfields Act.

The 2002 Brownfields Act also authorizes grant funds to establish or enhance state and tribal voluntary cleanup programs that encourage private parties to identify and clean up sites. Some states began to establish voluntary cleanup programs in the late 1980s to alleviate

[4]EPA guidance limits the portion of funds that can be used as subgrants to 40 percent of the original grant amount.

concerns that liability under federal and state hazardous waste cleanup laws was hindering brownfield cleanups. All 50 states now have voluntary cleanup programs, although these programs vary considerably in scope and breadth. The 2002 Brownfields Act authorizes EPA to provide $50 million for each of fiscal years 2002 through 2006, to support state or tribal programs. In 2003, EPA distributed almost $50 million among the 50 states, 30 tribes, the District of Columbia, and the Virgin Islands to develop or enhance their programs' infrastructure and capabilities. The Congress appropriated $50 million in funding for state and tribal voluntary cleanup program grants for fiscal year 2004.

Stakeholders Reported That EPA's Program Enables Brownfield Redevelopment That Might Not Otherwise Occur

Stakeholders told us that EPA's Brownfields Program contributes significantly to grant recipients' redevelopment efforts by providing seed money to identify contamination and estimate cleanup costs and by supporting cleanup activities.[5] By funding site assessments and cleanups, EPA supports activities that private lenders and other government programs often do not fund, according to stakeholders. In this regard, a revolving loan fund grant recipient in Washington State told us that the banking industry generally is reluctant to lend money for brownfields projects because of the high risks involved. Consequently, EPA is an important—and sometimes the only—funding source for the critical assessment and cleanup activities in the initial stages of redevelopment. Stakeholders also told us that EPA's grant funds are important to brownfields redevelopment because they are often applied to sites with (1) more complex cleanup requirements, (2) less desirable locations, or (3) liability or ownership issues that make them less likely to be redeveloped by private or other governmental investors alone.

Although stakeholders believed that EPA's contribution is important, all of the grant recipients we interviewed told us that they often combined funding from many sources to clean up and redevelop brownfields, using EPA's grants in conjunction with funds from other federal, state, and local sources. For example, a Colorado real estate developer with whom we

[5]These stakeholders included a nonprobability sample of eight EPA brownfields grant recipients, as well as real estate developers, property owners, attorneys, and nonprofit organizations, which the grant recipients identified, and several industry groups and associations representing state and local governments with brownfields expertise that we identified. Some stakeholders did not offer a response to our open-ended questions on various issues, while others offered more than one response. We did not determine the extent to which stakeholders agreed or disagreed with any particular response offered by other stakeholders.

spoke combined an EPA brownfields revolving loan, a substantial company equity investment, several commercial loans, bonds, and other financing to fund a mixed-use project that will include retail shops and housing units. Although EPA's program makes an important contribution to some brownfields projects, an unknown number of other projects are under way or have been completed using funds solely from other public and private sources without any EPA assistance. An official with the Northeast-Midwest Institute—a nonprofit, nonpartisan research organization for the Northeast and Midwest states—emphasized that, while EPA and other federal programs provide key support for brownfields redevelopment, the number of brownfield sites far exceeds the number of properties that could be addressed by available federal resources. Similarly, in its September 2003 report on the Brownfields Program, EPA stated that while there remain hundreds of thousands of brownfield sites across the country that could be put to better use, the sheer enormity of the problem far outstrips all available federal resources.

The state officials we contacted also reported that EPA brownfields assistance is crucial to establishing and expanding the scope of their voluntary cleanup programs. Program officials from 4 of the 10 states we contacted—Kentucky, Virginia, West Virginia, and Wyoming—reported that EPA's funds keep their voluntary cleanup programs operating and that their programs would not exist without this assistance. State officials from Colorado and Minnesota commented favorably on the flexibility that EPA's funding provides their state programs. In this regard, officials from all 10 states said that their programs would not be able to accomplish a number of key activities without EPA's assistance, such as compiling state inventories of brownfield sites, performing limited brownfields site assessments, and developing needed guidance and information for program participants. For example, state officials overseeing Alabama's program said that EPA's funding allowed the program to hire additional staff, provide training, and develop an inventory and public record of brownfield sites. Similarly, Colorado program officials noted that, without EPA's funding, the state's program would not be operating at its current service level and would not have undertaken activities such as preparing cleanup guidance to deal with the state's growing problem of contamination from illegal methamphetamine drug laboratories.

EPA's Current Performance Measures Are Not Sufficient For Effective Program Oversight and Decision Making

The performance measures that EPA reports to the Congress regarding its brownfield activities do not fully address the program's central objectives, thereby limiting both the agency's and the Congress' ability to determine the extent to which the program is achieving its goals. According to EPA, the specific objectives and goals for the Brownfields Program are to (1) assess, clean up, and redevelop 9,200 properties; (2) leverage $10.2 billion in cleanup and redevelopment funding; and (3) leverage 33,700 jobs. In its fiscal year 2003 annual report, EPA reported to the Congress on the cumulative (1) sites assessed, (2) jobs generated, and (3) cleanup and redevelopment funds leveraged. However, EPA did not report the number of properties cleaned up or redeveloped under the program. In addition, EPA's performance measures do not provide information on the impact of EPA's funding to state voluntary cleanup programs, which comprised about one-third of the total Brownfields Program funds in each of fiscal years 2003 and 2004. Moreover, while EPA's objective to assess, clean up, and redevelop properties addresses the environmental impact of the program, its measures do not allow the agency to determine the extent to which the program helps reduce environmental risks, a key agency goal. In 2002 and 2004, the EPA Inspector General reported that while the Brownfields Program's current performance measures may provide information on economic outputs and activities, the measures do not provide information on how risks to human health and the environment will be reduced or controlled.[6] Furthermore, we testified in July 2004 that EPA is not consistently ensuring that its grants—such as those awarded under the Brownfields Program—are clearly linked to environmental results.[7]

Recognizing the limitations of its performance measures and supporting data, EPA is taking steps to obtain and report additional information that may better measure Brownfields Program accomplishments. In August 2002, EPA initiated an internal work group to develop a data collection instrument to gather information from site assessment, cleanup, and revolving loan fund grant recipients beginning in fiscal year 2004. EPA officials believe that this instrument will provide them with more detailed

[6]EPA, Office of Inspector General, *Observations on EPA's Plans for Implementing Brownfields Performance Measures*, 2002-M-00016 (Washington, D.C.: May 24, 2002) and *Substantial Progress Made, But Further Actions Needed in Implementing Brownfields Program*, 2004-P-00-20 (Washington, D.C.: June 21, 2004).

[7]GAO, *Grants Management: EPA Continues to Have Problems Linking Grants to Environmental Results*, GAO-04-983T (Washington, D.C.: July 20, 2004)

information on such factors as common contaminants and property size, and will allow the agency to better measure the direct economic and environmental impact of EPA's activities on a property-specific basis. EPA officials anticipate that these data will provide a better measurement of program results, and they plan to conduct further evaluations after a full year of data collection to determine whether and how to use the data to develop environmental indicators. EPA also has efforts under way that may assist the agency in developing performance measures to gauge the impact of its funding for voluntary cleanup programs. In 2004, EPA formed a work group of state and tribal officials that analyzed methods that states currently use for measuring their programs. EPA officials told us that the work group is now developing performance measures for EPA's assistance to voluntary cleanup programs that could be implemented by the end of fiscal year 2005.

A recent review by the Office of Management and Budget (OMB) has also prompted EPA to take steps to develop measures that provide a more comprehensive picture of the Brownfields Program's impact. In February 2004, OMB completed an EPA Program Assessment and Rating Tool review—a systematic method of assessing the performance of program activities, focusing on their contribution to an agency's achievements of its strategic and program performance goals.[8] According to the Director of EPA's Office of Brownfields Cleanup and Redevelopment, OMB recently approved a performance indicator that will be used in future OMB reviews and will enable OMB to compare the efficiency of the Brownfields Program with other federal programs, and could also be incorporated into the program's strategic plan and annual performance report.[9] Finally, EPA's fiscal year 2005 annual performance plan included additional

[8]EPA and other federal agencies are required under the Government Performance and Results Act (GPRA) to develop strategic plans covering at least 5 years and submit them to the Congress and the Office of Management and Budget. GPRA also requires agencies to set annual performance goals and to prepare annual reports setting forth the performance measures and the agency's actual program performance as compared with the annual goals. OMB developed a Program Assessment and Rating Program for federal agencies in 2002 to improve program performance and better link performance to budget decisions.

[9]OMB also directed EPA to modify its currently reported measures to provide more accurate information about the program's impact. EPA agreed to qualify two of its Brownfields Program performance measures—jobs generated and cleanup and development funds leveraged—by indicating that the EPA investment "enabled" the outcome. OMB believed that this addition (1) recognized that other entities were involved in the creation of jobs and the leveraging of funds on brownfield projects and (2) impacted these measures.

information that more closely links the program to the goals of its strategic plan. The plan added a new measure that tracks the number of cleanup grants awarded and added a targeted goal—60 properties—for the "properties cleaned up" measure that was included in the previous annual plan without such a goal. This latter measure potentially addresses the program's environmental impact. While incorporating this measure and goal as well as efforts to collect additional information are steps forward in measuring the agency's progress in achieving the program's goals and objectives, EPA must ensure that its data collection efforts address the program's central activities and that, once collected, it uses these data to inform the Congress on program results.

Stakeholders Identified Changes That Could Enhance Existing Federal Brownfield Redevelopment Efforts

Stakeholders suggested three options for improving or complementing EPA's Brownfields Program.[10] First, stakeholders believed that revising a restrictive provision of the Brownfields Act could expand the number of eligible grant applicants. The act effectively limits grant eligibility to parties who purchased their property after January 11, 2002.[11] The stakeholders we interviewed suggested that EPA's Brownfields Program could have a broader impact if those who purchased property prior to January 11, 2002, were also eligible to receive brownfields grants. Representatives of three of the organizations with brownfields expertise mentioned that many local governments that were actively addressing brownfields by acquiring these sites before the law was enacted have been penalized by the act's eligibility date. EPA brownfields officials and a coalition of groups with brownfields expertise reported that EPA rejected a number of brownfield grant applications in fiscal year 2003, and other applications were never submitted, largely because of the eligibility date. Although the Consolidated Appropriations Acts for Fiscal Year 2004 and Fiscal Year 2005 temporarily suspended the eligibility date for each respective fiscal year, all of the stakeholders we spoke with who raised this issue believed that the date will continue to limit program eligibility—and, thereby, the program's support of brownfields redevelopment—until it is permanently revised. The Director of EPA's Office of Brownfields

[10]These stakeholders included representatives of eight land developers and other private companies and four organizations with brownfields expertise.

[11]The act states that responsible parties are not eligible for brownfields grants. The current owner of a contaminated property is generally considered to be a responsible party. However, persons who purchased property after January 11, 2002, may be considered bona fide prospective purchasers, who are not generally responsible parties.

Cleanup and Redevelopment supports removing the eligibility date from the requirements for obtaining prospective purchaser liability protection, noting that the act's other requirements for obtaining prospective purchaser liability protection are sufficient without specifying the date of acquisition.

Second, almost one-half of the stakeholders we contacted suggested changes to address the underutilization of revolving loan fund grants. As of November 1, 2004, recipients of revolving loan fund grants had loaned about $28.6 million (about 17 percent) of the $168 million in such grants that EPA had awarded up to that date. EPA data show that, of the 154 active grants, 47 grant recipients had made 67 loans for brownfields projects and the remaining grant recipients had made no loans. Reacting to this situation, EPA began rescinding revolving loan fund grants from communities that had not used them and "deobligated" about $12 million in revolving loan funds, thereby making them available to make other grants.[12] Furthermore, the Senate Committee on Appropriations expressed disappointment in the revolving loan component of EPA's Brownfields Program, noting in the report accompanying EPA's fiscal year 2004 appropriations bill that only a small percentage of grant recipients had made loans, resulting in only a small number of completed brownfield site cleanups over the life of the program.[13] In response to these concerns, EPA officials told us that the Brownfields Act's provision allowing a portion of loan funds to be awarded to brownfield projects in subgrants that do not have to be repaid will bring renewed interest in the loans.[14] EPA also told us the act eased the administrative burden on grant recipients by no longer

[12]Thirty grants were expected to be deobligated by the end of calendar year 2004, and 44 additional grants were expected to be reissued under the new requirements in the act by this date.

[13]EPA officials stated that informally collected information obtained as of November 1, 2004, suggested that cleanups have been completed at 37 brownfield sites, are ongoing at 19 others, and 3 more are about to get under way. They explained that since EPA brownfield funds generally represent only a portion of ongoing cleanup activities, recipients may delay reporting progress until such time as all site cleanup activities are completed.

[14]EPA guidance allows up to 40 percent of revolving loan fund grant dollars to be distributed as subgrants to provide direct assistance for brownfield cleanups.

requiring their full adherence to CERCLA National Contingency Plan requirements.[15]

According to five revolving loan fund grant recipients and a number of developers, however, other technical and administrative requirements have also discouraged grant recipients from using the funds. Managing a revolving loan fund requires a government or nonprofit entity to perform many of the functions of a commercial lending institution, including establishing interest rates and collateral requirements; processing and approving loans; and collecting loan payments. While factors such as the availability of low-interest private loans play a role in the number of loans made, revolving loan fund grant recipients told us that staff time and expertise are key to making these loans. Representatives of eight stakeholder groups indicated that EPA could achieve greater results with revolving loans by giving priority to applicants with proven expertise or to coalitions of agencies that can consolidate administrative functions and thereby produce economies of scale. Specifically, stakeholders reported that grant recipients with in-house technical expertise, who partnered with other agencies with expertise, or that hired contractors to obtain technical expertise were better positioned to set up a fund because they were able to gain access to financial expertise or experience in administering other revolving loan funds. For example, the Department of Environmental Services in Hennepin County, Minnesota, contracted with a nonprofit organization that specializes in servicing loans to manage its fund. Hennepin County has made four loans totaling over $1.7 million to local brownfield projects.

In the same vein, grant recipients said that coalitions that consolidate administrative functions and pool revolving loan fund grants were able to take advantage of economies of scale by making more loans once they had made the up-front administrative investment to establish the fund. Nine grant recipients and other stakeholders told us that EPA's grants were not large enough to justify the time and effort required to establish a fund

[15]Prior to 2002, EPA-funded brownfields cleanups were subject to the National Contingency Plan (NCP)—CERCLA regulations that provide EPA's blueprint for how to respond to hazardous substance releases. Under the 2002 Brownfields Act, an NCP provision applies to EPA-funded brownfields cleanup only if EPA determines the provision is relevant and appropriate to the Brownfields Program. While EPA regions will determine the terms and conditions applicable to each grant, EPA expects that grant recipients will receive increased flexibility as a result of the new provision. EPA, however, retains certain requirements in order to ensure environmental cleanups protect public health and the environment.

because it is frequently depleted after one or two loans are made. The 67 loans made to date range from $50,000 to $1.95 million, with an average loan amount of about $420,000. The act limits revolving loan fund grants to $1 million, and many grants have been funded at less than this amount. However, EPA grant guidelines allow coalitions of eligible entities to apply together to receive funds of up to $1 million each. For example, five entities could jointly apply and each receive up to $1 million, for a total of up to $5 million for the coalition. In selecting grant proposals, EPA currently evaluates grant applicants' ability to manage a fund as 1 of 10 ranking criteria, allocating it a maximum of 10 points out of a possible 120 points.[16] While EPA's fiscal year 2005 grant proposal guidelines require a description of previous experiences managing federal funds and a plan for managing the loan fund in accordance with prudent lending practices, EPA's draft guidance to regional offices does not require grant applicants to discuss the expertise or resources they will rely on to implement prudent lending practices. We did not evaluate EPA's grant selection or award process.

Finally, stakeholders generally supported a federal brownfields tax credit, which would allow developers to offset a portion of their federal income tax with remediation expenditures, to complement EPA's Brownfields Program and encourage brownfields redevelopment. All of the stakeholders we spoke with about such a tax credit believed that it could attract developers to brownfield sites on a broader national basis and enhance the federal, state, and local brownfields redevelopment efforts currently under way. One stakeholder noted that while brownfields redevelopment is still a small and specialized real estate market, a federal tax credit could attract new developers and investors to these projects. At least 10 developers and 5 state or local government officials also said that other similar federal tax credits, such as the federal low-income housing and historic rehabilitation credits, have proven effective in stimulating

[16]In addition to management capabilities, EPA evaluates (1) the grant proposal budget; (2) the community's need for brownfields redevelopment; (3) the process for selecting loan or subgrant recipients; (4) the target market and business plan for making loans and subgrants; (5) the sustainable reuse of projects; (6) the creation or preservation of public or greenspace; (7) community involvement activities; (8) the reduction of threats to human health and the environment; and (9) the leveraging of additional funding resources. According to EPA officials, the grant proposal budget, target market and business plan, and the leveraging additional resources criteria also provide an assessment of applicants' ability to manage the grant.

redevelopment.[17] The U.S. Conference of Mayors and other organizations told us that a federal tax credit has tremendous potential to foster new brownfield redevelopment. Furthermore, a brownfields redeveloper in Minnesota suggested that a federal tax credit would be most effective if the credit were directed to brownfield projects with more complex contamination, liability, or cleanup issues that would be less likely to be redeveloped without federal aid. Nevertheless, while stating that a credit could be beneficial, three stakeholders voiced concern about a tax credit's potential impact on federal revenue. EPA's Brownfields Program Director generally supported a federal brownfields tax credit as an incentive to new brownfields redevelopment. We did not analyze the costs and benefits of such a tax credit or any other potential incentives.

Conclusions

Although stakeholders we contacted acknowledged that EPA's contribution to brownfields revitalization is significant, the agency has not fully measured or reported to the Congress on the extent of this contribution. This information is needed both for EPA to improve the effectiveness of the program and the Congress to improve congressional decision making and oversight. While EPA has collected and reported data on some of the program's achievements, further action is needed to ensure that both the agency and the Congress have sufficient information on program results, particularly with regard to its assistance to state and tribal voluntary cleanup programs and impacts on environmental risks. EPA has initiated efforts to obtain additional data, but the agency must ensure that these efforts address the program's central activities and that, once collected, it uses these data to inform the Congress on program results. Although stakeholders we contacted praised EPA's program, they identified a number of limitations that, if addressed, could improve the program. However, while it appears that these suggestions might potentially enhance brownfield efforts, a careful review of their implications is warranted before EPA or the Congress takes action to implement them.

[17]The federal low-income housing tax credit provides an owner of newly constructed or renovated rental housing, who sets aside a specified percentage of units for low-income persons for a minimum of 15 years, with a tax credit over a 10-year period. The federal historic rehabilitation tax credit provides the owner of a certified historic structure with a tax credit equal to 20 percent of the amount of qualified rehabilitation expenditures.

Mr. Chairman, this concludes our prepared statement. We would be happy to respond to any questions that you or Members of the Subcommittee may have.

Contacts and Acknowledgments

For further information about this testimony, please contact me at (202) 512-3841. Richard P. Johnson, Kirk Menard, Joanna Owusu, and Vincent P. Price made key contributions to this statement.

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Mr. TURNER. I thank both of you for being here and for the time that you have put into this and again for EPA the effort that you continue to put into what is an important issue for our communities. As you know, not only do brownfields represent an economic opportunity, they are many times a blighting influence for people who either own property near them or for families that live around them.

What I would like to focus today in the area of questions really are issues of economics of brownfield redevelopment. It strikes me in reading both the GAO report and the testimony from EPA that many of the things that we talk about in the two testimonies do not quite hit the economics that we have in many of brownfield sites where the cost of cleanup and demolition of buildings that are a nuisance upon the real estate might exceed the value of the property and that the economic marketability for these properties to be addressed and redeveloped just is not there. So I want to go through a series of questions that really look to the economic problem and then the gap that we have in being able to address it.

My first question is really to ask that I think both of you would agree that brownfields are a federally created problem, that the issue of the brownfields being areas where a potentially responsible party or a landowner has disincentives for its redevelopment, that our current laws and regulations actually encourage abandonment of the property; and I want to know if both of you agree with that.

Mr. STEPHENSON. Because of potential liabilities, you mean?

Mr. TURNER. Correct.

Mr. STEPHENSON. The liability requirements established in the CERCLA and the Superfund program?

Mr. TURNER. Yes.

Mr. STEPHENSON. Those liabilities were created in fact by Federal law, yes.

Mr. DUNNE. I would agree with that.

Mr. TURNER. In situations where the costs of cleanup of the property exceed its market value and where there is no potentially responsible party that currently exists, either they have ceased operating as a business or if they are an individual corporate entity that is no longer able to be identified as a successor entity and the costs exceed the cleanup, would you both agree that there is no private sector incentive, there currently is no ability for the private sector to come in and address the redevelopment of that property?

Mr. DUNNE. I would agree with that.

Mr. STEPHENSON. Yes.

Mr. TURNER. In looking at the EPA's loan fund program—and, first off, let me tell you that I think everyone agrees, as the GAO report identifies, that the EPA's programs are very important and have assisted a number of communities. However, I do believe that, as the GAO report identifies, there is a gap in our ability to address the need.

The loan fund itself, does recognize that the funds are going to be returned in some way; somehow the property or project or the individual receiving the loan is going to economically have a way to return the funds. Could you discuss that, Mr. Dunne, for just a moment as to how that might not be able to assist people who have a property that isn't going to be market viable as it is redeveloped,

that is not going to produce the proceeds that would be able to be applied to the loan? Has that been an impediment perhaps in some of the loans being applied to some of the more difficult sites?

Mr. DUNNE. I don't think it's the repayment ability so far that has surfaced as a problem. Banks do have bad loans that they have to cover. I think it is in the early stages of EPA's working on revolving loan funds that it probably wasn't stringent enough in terms of looking at a business plan. We are an environmental agency. We are not a banking agency. And one of the things that we have learned and agree with GAO is that we have to look at our criteria and take a look at organizations that have the ability to manage the loan and also manage a Federal grant because it is a grant. But the term revolving loan fund is significant in terms of what it says. The money will be returned to a fund that can be loaned out later.

So I think that it's a good idea for us to not only tighten the criteria in terms of a business plan but make sure that the organizations that are going to be the recipients of these grants have a great opportunity to be able to be successful at making loans so they can have a viable revolving fund.

Mr. TURNER. Mr. Stephenson, your report addressed some of the difficulty in the loan fund's success.

Mr. STEPHENSON. What we heard from stakeholders were a lot of the up-front costs associated with establishing the fund and administering the fund itself was, in fact, an impediment. You have set up a payment schedule, an interest rate, etc. This is a relatively new fund, so it's not yet self-sustaining. You receive payments over a period of time, and so there isn't a funds per se. It's all been loaned out to the extent that they can loan it out. But what we heard from stakeholders was it's primarily that up-front expertise you need to establish the funds itself which discourages its use. Frankly, some developers found it easier just to go to the bank and get a loan.

Mr. TURNER. Mr. Dunne, in your testimony you indicate that the assessment grants that have been provided have resulted in more than 6,800 assessments. The grant programs, the assessments, the loan program, do you have any quantification that you can provide that would tell how many brownfield sites have gone through an EPA process where they have received financial assistance and have resulted in cleaned up and viable redeveloped property?

Mr. DUNNE. Currently, as I mentioned, Mr. Chairman, we are putting together a property profile of which I think we will have for 2003 and 2004 fairly quantifiable information that will demonstrate the performance of the program. We recognize the fact that there are so many brownfield sites in this country that the number of assessments we do is fairly minute compared to the overall number, but we also recognize the fact that we will never be able to deal with all 450,000 to a millionsites. Some of them just aren't going to be viable. But we are looking for more and more ways to quantify the positive nature of the program and the things that are successful so that we can look for more successful ways of providing these funds to the community so they can provide job opportunities and other benefits.

Mr. TURNER. As you go through the assessment process, does your program include any incentives for PRPs, potential responsible parties, to come to the table and participate in the assessment? So many times they have knowledge that would be very important for the success of the assessment and for determining any environmental remediation plan.

Mr. DUNNE. When you say potential responsible parties, in the Superfund context they are not eligible for brownfields, nor should they be in our lexicon right now. We generally want to provide the funds and let the local entities deal with the developers and the bankers and the other people who are involved. We don't want to be intrusive from EPA's position in trying to dictate from Washington how to sort out individual problems at the local level.

Mr. TURNER. You made an important point, and that is the difference between brownfield and Superfund. Could you elaborate on that for a moment? Because people frequently get concerned when we talk about trying to address the brownfield issue, that we might impact Superfund.

Mr. DUNNE. As you know, in Superfund law, if we know of responsible parties or even one party, they could be held liable for cleaning up a whole site. Usually, contamination is much worse at a Superfund site than it will be at a brownfield site. So I think we are talking about a magnitude of difference that's quite wide. And I think it's good that this law—brownfield's— emanated out of the Superfund law because we were running into the concern that there were a number of local governments who had this property but they wouldn't score high enough with the properties to be put on the national priority list. So if they are on the national priority list now they are not eligible whatsoever for brownfields funding. So, by and large, we are dealing with abandoned properties or you are dealing with private property owners who have this site who—because of the liability—do not want to let go of the site.

That has changed because of brownfields. There are people now that are willing to come in as prospective purchasers and take this property over and redevelop it if they assure that they are not going to be liable like they would be under a Superfund project.

Mr. STEPHENSON. It does have to do with the seriousness of the contamination as well, but it is important to note that it's potential contamination on a brownfield site. And in fact a lot of EPA's assessments have shown that at least 30 percent of the sites assessed don't have any contamination at all.

Mr. TURNER. I thought that was encouraging in the information that we had. But, under brownfields, an individual property party that was responsible for the contamination of the brownfield site, they do have liability, do they not, for the cleanup?

Mr. DUNNE. Yes.

Mr. TURNER. Many times the fact that they have that liability can result in them trying to avoid the liability by the abandonment of the property or by not fully participating in the redevelopment or the remediation of the property; and in doing an assessment, I believe that many times if we could bring those parties to the table where they would participate in the assessment process, in the remediation process, that their knowledge could be very important for our success. I was wondering if, in your grant programs, your

assessment programs, your revolving loan program, if you had any incentives that could be provided for those individuals to come to the table and participate? I understand your statement of you want the communities to be on the ground, so to speak, more involved, but is there any mechanism, recognizing that the liability that those individuals have, that EPA has to bring them and assist them in coming to the table?

Mr. DUNNE. Well, we don't have anything under the statute that is going to relieve them of the liability. So in that respect I guess the answer is no.

Mr. STEPHENSON. Can I add something, Mr. Chairman?

Mr. TURNER. Please.

Mr. STEPHENSON. Brownfields does add the innocent landowner defense which property owners on contiguous property, if they have exercised their due diligence and so forth, do have liability limitations. So you're not automatically liable for all the cleanup. Brownfields does afford additional liability limitations even beyond what was done under CERCLA. It sort of codifies the principles under CERCLA as well.

Mr. TURNER. Getting back to the individual that was responsible for the contamination, with the grant programs and with the revolving loan funds, does EPA in any way under the area of brownfields pursue those individuals to recapture the grant moneys that are provided or the loan funds that are provided?

Mr. DUNNE. No.

Mr. TURNER. Is there a statutory reason for that?

Mr. DUNNE. We don't have enforcement authority under brownfields to go do that.

Mr. TURNER. Who would have the responsibility for pursuing——

Mr. DUNNE. Well, States often have enforcement programs that they could invoke.

Mr. TURNER. I was very encouraged by the information in your testimony about the redevelopment of brownfields resulting in the saving of greenfields. Specifically, you cited the statistic for every acre of brownfields reused you are saving 4½ acres of green space. Could you tell me how those figures were arrived at? Because I think this is an important aspect for us to focus on, that it's not just the issue of cleaning up these sites and bringing economic opportunity back to these sites but it's also the opportunity to conserve, which is certainly an environmentally conscious way to proceed.

Mr. DUNNE. We had a study done by George Washington University that defined this problem and the successes in terms of saving these acreages. So we would be happy to supply you with any of that background.

Mr. TURNER. Mr. Stephenson, you had indicated that, in looking to stakeholders, that you did find a degree of support for a tax credit for addressing the remediation costs. My bill, House bill 4480, would provide a tax credit that could help address those properties where the cost of contamination exceeds the value of the property, giving them more—a marketability. Could you tell me, as you pursued your study and report of the feedback you received, why is it that you believe that a tax credit was something that is welcomed?

Mr. STEPHENSON. Well, any incentive like that to offset the initial cost of investment in a property is welcomed; and the tax credit certainly falls into that vein.

Mr. TURNER. And from EPA's perspective a tax credit is a vehicle that you believe would also be able to accomplish subsidizing that economic viability for the properties.

Mr. DUNNE. EPA is not in the tax policy business, Mr. Chairman, so I'll be careful about how I answer that. Maybe you should have a Treasury Department official up here. But certainly if it furthers the objectives of the brownfield program, tax incentives would be a very viable tool to have.

Mr. TURNER. Gentlemen, do you have anything else you would like to add before we conclude our first panel?

Mr. STEPHENSON. No, we're just encouraged that EPA has accepted our recommendation as implementing them; and we think the brownfields program has a lot of promise.

Mr. TURNER. Gentlemen, thank you very much.

We will go then to our second panel.

Gentlemen, I appreciate you being here. We have on our second panel the Honorable Don Plusquellic, president, U.S. Conference of Mayors; James E. Maurin, chairman, International Council of Shopping Centers; Jonathan Philips, senior director, Cherokee Investment Partners; and Douglas Steidl, president, the American Institute of Architects.

Gentlemen, would you please stand to receive the oath.

[Witnesses sworn.]

Mr. TURNER. Let the record show that all the witnesses have responded in the affirmative.

Since we understand that the mayor has a plane to catch, we are going to let him give his testimony and answer questions, and I understand that he will be leaving us. Mayor.

STATEMENTS OF DON PLUSQUELLIC, PRESIDENT, U.S. CONFERENCE OF MAYORS; JAMES E. MAURIN, CHAIRMAN, INTERNATIONAL COUNCIL OF SHOPPING CENTERS, BOARD MEMBER, THE REAL ESTATE ROUNDTABLE; JONATHAN PHILIPS, SENIOR DIRECTOR, CHEROKEE INVESTMENT PARTNERS, LLC; AND DOUGLAS L. STEIDL, PRESIDENT, THE AMERICAN INSTITUTE OF ARCHITECTS

STATEMENT OF DON PLUSQUELLIC

Mr. PLUSQUELLIC. Thank you, Congressman. I'm very pleased to be here on behalf of the U.S. Conference of Mayors and the citizens of my city, Akron, OH.

I want to thank my good friend, Congressman Mike Turner, who invited me here to speak. Many of us throughout the world of mayors across the country as well as many of us in Ohio know of the great job that you did as mayor of Dayton, and I am proud that you have not forgotten your roots and your background as you joined this fine group of individuals here as a Congressman. You remembered the problems that face cities across this country, and we appreciate very much your support of the community development block grant program, the brownfields issue that you have

been so engaged in discussing and attempting to find solutions as well as other urban issues.

I want to acknowledge all of the fellow panelists. In one way or another they have all helped or assisted the U.S. Conference of Mayors and the many issues that face us in particular in brownfields over the past number of years.

I want to give sort of a personal perspective here. Thirty-two years ago I was elected city councilman in Akron; and at that time, watching the mayor and his activities, I can tell you that, for the most part, mayors, pretty much indicative of mayors across the country, we are sort of cheerleaders with economic development. The private sector was over here and did their thing. The public sector was over here. But as we transitioned in a terrible process that we went through, unfortunately, with the loss of 35,00 rubber jobs, we on the public side, the mayors and council members and community leaders almost on every level have had to be directly engaged and involved in what we call economic development.

Akron has repositioned itself as a diverse manufacturing, technology, education and research center; and a couple of years ago Newsweek magazine picked Akron as one of America's top 10 hot tech cities.

When I became mayor, I realized early on the importance of being directly involved in the redevelopment efforts of our community, and now I spend more than half of my time dealing directly with businesses, business leaders. I think the question remains, what is the proper role for local, State and the Federal Government to play in facilitating the economic development and specifically brownfields redevelopment?

Mayors and local governments are responsible, I think, in today's complex and competitive world, this global marketplace we all live in, to facilitate and be responsible for assisting businesses to retain and create jobs. We are always actively recruiting and trying to work to retain jobs as well as facilitate new expansions. As a matter of fact, the plane I have to catch is to go overseas where I will be attending at least two different trade missions or participating in at least two different trade missions.

But in our cities we find it impossible to get the job done without the proper tools and resources, and many of those are not directly related to the public side. Regarding the benefits of brownfields, for instance, or the redevelopment of brownfields in our communities, our U.S. Conference of Mayors last survey shows that 121 cities have successfully redeveloped close to 1,200 brownfield sites consisting of nearly 11,000 acres of land and the creation of over 117,000 jobs.

While that is very commendable and those successes are wonderful examples of what local governments have had to do or forced to do, there's an estimated 500,000 brownfield sites that could be redeveloped, saving greenfields and providing opportunities for more job opportunities in our community.

Many cities, I would argue, have done a good job of developing what might be described as low-hanging fruit or what we might describe as light tan brownfields, those areas that are not completely contaminated or with little contamination or in a very desirable location, making it beneficial for businesses to take a chance on de-

veloping. But this is certainly not applicable to some cities—Youngstown, OH would be one—where the difficulties of hemorrhaging of jobs out of their communities is so overwhelming or the population loss or the difficulties in bringing back economic development is so great or in those cases where the brownfields are so contaminated that we literally have people walking away from them. Those sites are very difficult to get people to redevelop, and those tough cases are really what I think your bill will help to address.

The current market conditions really make it impossible for a private business person to want to take on that liability issue in particular. Even if the idea of cleaning up the site is something that they can take within their budget or within their timeframe, most developers just aren't anxious to take the chance on those environmentally contaminated sites; and without those extra incentives it's impossible to get those developers back.

The mothballing of sites is probably the greatest problem that we face, where companies realize that it's so expensive and the liability so great that they just decide to wall it off, fence it off, and leave it. And in cities across this country there's really no motivation without some kind of an incentive.

As I address the future, I want to say that the Nation's mayors very much appreciate President Bush's leadership by signing the brownfields bill into law. The law has resulted in a boost in our efforts to redevelop some of those sites. This program needs to continue and needs to be fully funded, especially the money that is targeted toward local governments efforts.

Other programs that have been successful include the Brownfields Showcase Communities program and the EDA program that targets brownfields as well as HUD's BEDI program.

But the one thing that has been missing is this incentive that you discussed with the first panel for the private sector themselves to spur their interest in redeveloping these sites, and that's why we are extremely pleased and excited about your bill, Congressman, with the tax incentive. It is very similar to a program already existing in the Federal Government, the Historic Tax Credit Program, which has seen considerable success in Akron in reusing our older commercial and industrial buildings.

A key component that I want to talk about is the incentive for the original responsible polluter to participate. Even if that company only contributes 25 percent of the remediation costs, they receive liability release for 100 percent of the approved plan demo and remediation costs. I think this is a particularly important issue, and I want to say and I have stated this before to you publicly, that it is one that the Conference of Mayors supports.

We have always believed in this general rule that the polluters should pay, and at first blush that always seems to be the right position to take. We know the result, though, is that companies mothball sites and walk away; and we need to have something that motivates the holder of the land to at least provide an assessment of the property and determine whether or not we can participate in helping to bring it back.

I want to also say that many of those sites are in the most economically disadvantaged areas. To me, that means the people who

need the jobs the most are at a disadvantage because they have sites close to them that could be redeveloped if we had something that really provided that incentive. So I am very much excited about that part of your proposal, and we want to work with you from the Conference of Mayors.

We understand the difficulty in not only the legal liabilities issues, many of the other issues that both extremes talk about when they talk about a bill dealing with these environmental issues, but in a time when we really need to be focusing on creating jobs, reutilizing resources and, I would add, preserving our green spaces, that the brownfields redevelopment is a way to accomplish these goals in our metropolitan economies that mean so much to the Nation's economy.

I want to take just a moment before I answer questions to sincerely thank you for the opportunity to quickly share with you my perspective as mayor regarding the importance of brownfields redevelopment and your creative way of trying to address the issues that you know all too well, coming from an older, industrialized city, the importance that brownfield redevelopment can have not only to our general areas of concern like tax base but truly in redevelopment of neighborhoods and providing job opportunities where they were needed. So we look forward to working with you to continue this work to bring back our communities, our neighborhoods, and I will be happy to answer any questions that you might have.

[The prepared statement of Mr. Plusquellic follows:]

MAYOR DONALD L. PLUSQUELLIC
PRESIDENT
THE U.S. CONFERENCE OF MAYORS
MAYOR, CITY OF AKRON

BEFORE THE SUBCOMMITTEE ON FEDERALISM
AND THE CENSUS
COMMITTEE ON GOVERNMENT REFORM
APRIL 5, 2005

Introduction and Background

- It is a pleasure to be here today to speak on behalf of The U.S. Conference of Mayors where I serve as President and my city of Akron, Ohio on the very important topic of brownfields.

- 25 years ago, I did not even know what a brownfield was. It was probably a good thing too, as my day job at that time was working in the legal department of the BF Goodrich Company in Akron, which consisted of 50+ buildings built in the 1920's and compromising over 3 million square feet. It was indeed a Brownfield.

- The City, in the mid-1980's assisted BFG in the transition from its former use as the headquarters and main manufacturing center to Canal Place. Canal Place is an adaptive reuse of offices, manufacturing, warehousing, and support services. After losing BFG and its thousands of employees, Canal Place today boosts over 3000+ employees.

- For the past 30 years I have participated in the re-invention of Akron. Over these past 30 years in public office, there has been no tougher obstacle we faced as a community, than the economic transition from a tire manufacturing center with a workforce of 35,000 to a day when all of these jobs were gone. Akron has repositioned itself as a diverse manufacturing, technology, education, and research center. Newsweek magazine picked Akron as one of "America's Top 10 Hot Tech cities a few years ago.

- In 1987 when I became Mayor – the role of the mayor in economic development was mostly as a cheerleader, standing on the sidelines while reacting to the private sector initiatives. Today, I spend more than half of my time in economic development. The question remains the same today "What role should local, state, and the federal government play to facilitate economic development, or more specifically, brownfields redevelopment?" And then the bigger question, "What can those levels of government do to spur the private sector to redevelop brownfield sites?" I wish to address these questions as well as discuss the impediments that remain for brownfields redevelopment.

The Role of Local Government and the National Economy

- Local government has had to become the principal agent of change in maintaining much of America's economic security. Mayors and local government are responsible for facilitating and assisting businesses to retain and create jobs. We are actively recruiting them, working to retain them and facilitate their expansion.

- Cities do not do this alone. Cities are integrated into "metropolitan economies". The Conference of Mayors "Metro Economies Report" shows that our nation is not one giant economy, but really 500 different metropolitan economies – that are

directly impacted by the choices that mayors and their city councils make each and every day.

- More than 83% of Americans live in Metro areas and in the last 10 years, U.S. Metros have generated over 85% of the nation's economic output, labor income and jobs. In the global marketplace, U.S. Metros represent 48 of the world's largest 100 economies. Cities and their Metro areas are where America's business gets done.

- However, we can't get the job done without the proper tools and resources.

Brownfield Redevelopment Benefits

- Regarding the benefits of brownfields - Our most recent Brownfields Survey shows that 121 cities have successfully redeveloped close to 1,200 brownfield sites, consisting of nearly 11,000 acres of land. 627 sites are currently being redeveloped comprising of close to 9,000 acres of land.

- This has translated to the creation of over 117,000 jobs, both development (25,000+) as well as permanent jobs (91,000+).

- These sites have been redeveloped into retail, mixed use, housing, commercial, manufacturing, and recreational uses to name a few.

- While these successes are wonderful, there is an estimated 500,000 brownfield sites that I think could be redeveloped if more tools were created.

Obstacles to Brownfields Redevelopment

- However, there remains some tremendous obstacles. Many cities have done a very good job of developing their "low hanging" fruit or, what we call at the Conference of Mayors, the light tan brownfields. These are sites that are either not that contaminated or in a desirable location or both. These are the sites that businesses are maybe willing to take a chance with developing.

- This however, is only applicable, to communities that have not completely hemorrhaged due to major job or population loss. Those community's are in a different development boat altogether. Those brownfields have more in common with other cities' medium-brown and dark-brown brownfields – ie. those are very common in the "rust belt". These brownfields are more contaminated and/or in not so desirable of locations. These are the tough nuts to crack when it comes to development. These are the sites that a city can assess the land but with the current market conditions, the city is probably going to have to clean up the land themselves as well as try to market the area to a potential developer and definitely provide incentives to lure a developer into the area.

- These are sites that most developers are not willing to touch. These are the sites that need those added incentives in order to make them competitive in the marketplace, especially if one is comparing it to a greenfield site.

- Most developers are not anxious to take a chance on an environmentally-contaminated site. Most need those extra incentives that turn negatives into positives. That is what is needed to attract businesses and developers to these abandoned areas.

- You can also add to the list of troubled properties – properties that the owners of are more interested in "mothballing" than to ever assess them, clean them up or redevelop. These owners have no motivation, whatsoever, to do something with these properties and they will sit on them forever unless something is done. That needs to be changed.

What Has Worked and How It Can Be Improved

- First let me say that the nation's mayors very much appreciate President Bush's leadership on the issue of brownfields by signing the Brownfields Bill into law. By providing money to do assessments, cleanup, enhancing state programs, and providing liability relief for innocent developers, has resulted in a tremendous boost in our efforts to redevelop these sites.

- This program needs to continue and needs to be fully funded, especially the money that is targeted towards local governments' efforts. Representative Turner, you know better than most, that many of these sites have no private sector interest in them whatsoever until a local government steps in and assesses what is on the property and even actually cleans it up themselves. That is why it is so vital for this program to be fully funded to potentially turn these properties around.

- We would also like to see a permanent fix in that Small Business Liability and Brownfields Act of 2002 so that cities are not considered potentially responsible parties (and ineligible for funding) just because they voluntarily took over a property prior to this law being enacted. Once again, as a former Mayor, you know the frustration, when you see a property that has been abandoned for years. Before this law was passed, our only choices were to let this property remain abandoned for another 30 years or take it over and try to do something with it. Cities should not be punished for trying to do something with that land.

- Also on the same note, there is currently a prohibition for administrative costs on the bill. This is just one more burden that hampers a city's ability to do what is right for their community and it should be changed.

- Other programs that have been successful that we would like to see continue include the Brownfields Showcase Communities program, the Economic

Development Administration (EDA) program when it targets brownfields, and HUD's Brownfields Economic Development program. The BEDI program, however, could be improved if it was allowed to be decoupled from the Section 108 program.

- We have also appreciated the tax incentives that have been offered and would like to see them made permanent. Those incentives, however, haven't spurred as much success as we were hoping. That could be the result that those incentives are still not that well-known.

Representative Turner's Bill

- The one thing that has been missing is a tax incentive that will really spur private sector investment to redevelop these sites. That is why, Congressman Turner, that we are really excited about the tax bill that you have proposed last year and the potential impact it may have. It parallels a similar federal program – the Historic Tax Credit Program, which has seen considerable success in Akron in reusing our older commercial and industrial building structures.

- Your proposed brownfield tax credit legislation would permit one billion dollars annually in deferral tax credits allocated to states according to population. This means that Ohio could get $36 million in census tracts with poverty in excess of 20%.

- Brownfield tax credits would be allocated for up to 50% of demolition and remediation costs pursuant to an approved remediation plan. This is a crucial component that is necessary to get tracks of land redeveloped.

- Another key component is the incentive for the original responsible polluter to participate. If they contribute no less than 25% of remediation costs, they receive liability release for 100% of the approved plan demo and remediation costs. I know this is probably the most controversial aspect of your bill but the Conference of Mayors supports your efforts.

- The Conference of Mayors has always supported the polluter pays principle. It makes sense to hold the companies who are responsible for contaminating the land to also make them clean up the land. However, as a result, we have many "mothballed" sites. Something needs to be done to motivate the holder of that land to at least assess the property and begin to clean it up.

- Your bill, Congressman Turner, was the first proposal we have seen that recognizes this problem and addresses the issue. Other ideas that we have seen were in Europe where they tax the owner for the optimal use of the site as opposed to the current use. That too, might motivate someone to cleanup a site and put it back into productive use, but I doubt it could get passed in any

jurisdiction. Europe is also unique for the fact that they are not as litigious as we are here in the States. There is more flexibility that is offered in those situations.

- We hope that you will once again reintroduce your bill because it could be a real shot in the arm to spur private sector developers to reinvest in our hardest hit communities. Your efforts with this bill are much needed and much appreciated.

Examples of How the Legislation Would Work In Akron

- In order to address brownfields and positively impact its economic growth, the City of Akron has consistently had to provide the financial resources necessary to affect brownfield cleanup in order to make a project financially feasible to the private sector investors.

- Brownfields remain a tremendous obstacle to economic revitalization of most cities including Akron. Brownfields not only discourage private redevelopment of individual projects but it also discourages reinvestment of surrounding properties. Thus, brownfields has a reverse multiplier effect. Further, they represent the most significant urban blight in our nation's cities today.

- As an example, I would like to demonstrate how Akron could use this proposed legislation had it been available. Advanced Elastomer Systems, a newly formed polymer company was seeking a new world HQ and R&D facility in NE Ohio. To the City's surprise they identified a former BF Goodrich manufacturing building, which was highly contaminated and was without question the worst eyesore in both our Downtown and possibly the entire county. AES's developer could not financially structure a deal due to severe contamination. The City of Akron entered as a partner to cleanup $3 million in contamination in order to secure this company' commitment. The City issued debt in order to address this critical project-financing gap. If the proposed Tax Credit Bill had been in place at that time, the financing could have been structured to permit the developers to recoup the environmental cleanup source instead of relying on local government.

- Another local example in Akron is the redevelopment of a highly contaminated industrial 8-acre site into a new grocery marketplace. Between the purchase price, environmental contamination, and site preparation costs, the City has expended over $5 million. The project proceeded only because of the availability of HUD EDI program (the forerunner of BEDI) and the State of Ohio's CleanOhio Program, which contributed $2.8 million. However, this program is to expire in 2006 and due to the State's budget deficient in all likelihood NOT be renewed. Again, had this proposed bill been available private developers would have been easier to attract to undertake this complex project.

- This proposed bill is extremely important to City's such as ours, as it affords an opportunity to shift some of the brownfield funding from our responsibility to that of the private sector. In this time of economic downturn, municipal budgets are

stretched to and beyond capacity, making it critical to stimulate additional PRIVATE INVESTMENT, which in turn will lead to job creation and long term community reinvestment.

- Finally, your proposed bill presents a unique opportunity for all levels of government to create a partnership that will engage the private sector as an active participant. This bill represents a strong foundation and building block from which economic revitalization and development in our nation's cities can occur.

Future Programs

- In the future, we would also like for you to consider an idea unveiled by the Conference of Mayors called the "Brownfields Redevelopment Action Grant" or BRAG program. The BRAG program is modeled after the former Urban Development Action Grant or UDAG program. For those of you not familiar with that program, it was a means for cities to leverage private sector investment. For every 3-6 dollars raised privately, there would be $1 of public sector money.

- So, if a city had a commitment from a private sector entity for $10 million, that city would have approximately $2 million to enhance that project. This type of "gap" financing can be crucial to making a deal happen. In our survey, 84% of our cities indicated that additional resources are needed besides assessment and cleanup funds. We think this is one means of making that happen in addition to the tax incentive.

Closing

- The Conference of Mayors believes that your proposed legislation will make a tremendous impact on our efforts to redevelop brownfields and we will strongly support your efforts to pass this legislation into law.

- In a time when we should be focusing on job creation, reutilizing resources, and preserving our green space, brownfield redevelopment is the way to accomplish those goals. We need to invest in our Metro economies so as to keep our national economy going and we need to recognize the important role that brownfields can play.

- I wish to thank you for this opportunity to share with you my perspective as Mayor regarding the importance of brownfields redevelopment and to thank you for your efforts to assist us in our efforts in redeveloping these properties. We look forward to continuing to work with you. Thank you.

Mr. TURNER. Mayor, the EPA, when they were addressing us, talked about acknowledging that this is a federally created problem. They acknowledged that the current Federal laws and regulations encourage abandonment, and they acknowledged that the current programs that provide assistance for assessment or cleanup are having what they classified as a minuscule impact on the number of brownfields that are out there.

You talked about tax base and, knowing that cities are not structured in a tax revenue collection manner to bring in dollars that are solely for economic development, you are focusing on fire, police, providing basic services. Since the Federal dollars there are minimal and the problem is federally created, what do you do as a mayor when you're going out and identify a site, you are trying to bring jobs to your community? You have, as most cities do, an issue of the availability of land. You have a parcel that has all the infrastructure that's there. It's an attractive site, locationwise. There aren't Federal resources available to you. How do you go about trying to find funds to environmentally remediate and address these sites for redevelopment?

Mr. PLUSQUELLIC. Well, in this difficult time, I would remind everyone in Washington and Columbus, OH, and all the State capitals around the country that we're all suffering the consequences of whatever it is that our country is going through. It's not just the Federal level and State level. So local governments are even more impacted by the economic conditions; and in cities where older industrial properties have supplied the economic strength of our country, the jobs, the tax base for our countries but have been left behind in this migration, in this global competition, it is even more difficult for those communities to find the local resources, which is why this is a very difficult issue for many of us.

In some instances, it is so absolutely necessary that we've gone out—I have personally on behalf of the city—to get involved with sites because they have such a negative impact on the surrounding area that we've started a process of trying to clean up or clear up or at least make the initial assessment of the property because it has such a devastating effect to the property around it.

I would suggest the biggest eyesore in Summit County, maybe in northeast Ohio, was located in the northernmost building of the former B.F. Goodrich complex. The B.F. Goodrich complex itself had been sold and was starting to undergo a revitalization. Meanwhile, there were two buildings left in the northern end, closest to downtown, closest to our local newspaper and the folks who looked at it every day out the window, and it had an impact from everybody coming into town on that side, the south side of downtown Akron. We started out spending our own money trying to start to assess, first of all, what the cleanup cost would be.

We finally received an inquiry from a company that wanted to move to Akron from outside of the State. So we spent our own dollars, over $3 million in cleanup costs, and didn't have time to wait for a Federal program or a State program to kick in. We had an opportunity to bring in 200 to 300 new jobs, for the most part, to Akron, so we ended up ourselves finding a way, struggling with our budget difficulties, to come up with the local dollars that were needed. And we accepted the liability because, at that time, it was

questionable whether or not we were going to have the State system in place to get the letter of no further action and the covenant not to sue. So we found a way to make it work.

But in many cities that just isn't possible, and in many instances we don't have companies that can wait for us to go and do the assessment when we have a real, live businessperson ready to go on a site, which is another part of this process that personally I think it would be worthwhile to have a system where people are involved early on in not only identifying but doing the assessment so that you know what the costs are and you know the time period that you are dealing with. That delay when you do have a businessperson who you finally find who's willing to take that risk and the unknown of how long it might take and the costs they might incur or the city it might incur makes it more difficult to find businesses to locate in those areas. That's just an added problem, I think, that needs to be addressed as well.

Mr. TURNER. Being a mayor, you have sat across the table from potential developers that are coming in and you're discussing with them a site. There has been a change in the law, obviously, with respect to liability. If someone comes in and buys a site, they may be able to avoid the liability for the cleanup of the site.

But one thing that seems to me to be still a disincentive, because we don't have a vehicle like the tax credits that will subsidize the cleanup, is that an individual who looks at redeveloping a site still has to weigh the possibility that they would lose their capital investment, that the value of the property, once it is redeveloped, if contamination is discovered to be more expensive than was thought or further contamination is found after they have undertaken investment in the property, that risk which they don't have in a greenfield, which is separate from the issue of just them being personally liable for the cleanup, but that their value that they have invested in the property might be lost or devalued is also a disincentive. Have you had individuals when you are sitting across the table trying to encourage them to go into a site that have raised the issue of that risk?

Mr. PLUSQUELLIC. Well, the other added part is getting a construction loan and then permanent financing for a project. And something that a developer normally does—I have actually literally been in the same example that I used. The developer was an Akron, committed, dedicated person who wanted to do the right thing, didn't have a lot of experience in redevelopment in brownfield sites, jumped in and started spending his own cash in anticipation of getting construction loans and literally had the bank pull out.

I sat in this meeting and negotiated with the banks to get the loans available for him that I've never had to do before. But it was because of one overriding reason, and you just touched upon it. The potential for the liability was so great that the banks didn't want to have any part in loaning the money, either in a short-term construction loan or in permanent financing; and so we had to help them structure that. The city of Akron took on all of the liability in the future for any environmental cleanup that was required beyond the $3 to $4½ million that we spent. We have continuing

monitoring wells. We do a number of things to test and provide information to the State EPA.

So we ended up taking the risk, but absolutely that is a problem for not only the developer but for anybody thinking about loaning money, the concern about the long-term liability.

Mr. TURNER. Mayor, I know that your time is limited, so I will end my questions at this point and ask you if there is any other item that you want to discuss or place on the record?

Mr. PLUSQUELLIC. Other than just once again thank you. Obviously, having people here understand firsthand the difficulties that we have in redeveloping our communities helps considerably when you're debating and discussing bills; we are very hopeful that in this session you will be successful in getting your colleagues to support this.

I think it is a real step forward that adds considerably to our ability to deal with these correctly stated, I think, in some circles, very difficult issues. We are all hung up on holding somebody accountable and liable for this. But, in many instances, these folks are long since gone. The folks who might have dumped something at the Firestone, the B.F. Goodrich, the Goodyear or the general sites I can tell you in Akron have long passed. And we have no idea what might be there but helping get a new business in to take the place of those major employers is really a great advantage to cities like Akron and Dayton and Youngstown and Cleveland and places around the country. So we appreciate your help, your understanding of this issue, and your continued commitment to work with us. Thank you, Congressman.

Mr. TURNER. Thank you, Mayor.

And we will go on to receive the testimony then of the remainder of the panel.

Mr. Maurin.

STATEMENT OF JAMES E. MAURIN

Mr. MAURIN. Mr. Chairman, thank you for the opportunity to appear before you today. And while the mayor of Akron is walking out, I just want to say, as a developer for the last 30 years and having worked with city and county and, in Louisiana County, parish governments, I was inspired by your comments and particularly by your knowledge of this whole area and industry. The mayors are starting to get it, and they are starting to understand what it takes to be able to develop these types of properties. So I want to thank you for your comments, Mayor.

My name is James E. Maurin, and I am founder and chairman of Stirling Properties in Covington, LA, a suburb of New Orleans. I have been a developer for 30 years in the gulf south and have redeveloped approximately half a dozen brownfield sites. I am testifying today on behalf of the International Council of Shopping Centers and the Real Estate Roundtable.

ICSC is the global trade association of the shopping center industry. It has more than 50,000 members, and we represent owners, developers, retailers, lenders and other professionals active in the industry.

Collectively, the Real Estate Roundtable members hold portfolios containing over 5 billion—that's with a 'b', 5 billion square feet of developed property valued at over more than $700 billion.

In recent years, changes in Federal laws have successfully addressed many of the barriers that inhibited private sector efforts to clean up and redevelop contaminated sites. As the threat of excessive environmental liability recedes, the remaining problem with most well located brownfield sites is a fairly simple one: Money. Other things being equal, it costs more to clean up and redevelop a brownfield than it does simply to buy and develop a greenfield. Properly conceived, brownfield redevelopments are investments, whether undertaken by the public or the private sector. And there are few investments of public dollars that produce such a positive economic and environmental dividend.

A simple calculation of how much it costs the Federal Treasury to offer a grant, a loan or a tax incentive is incomplete without factoring into the equation the future jobs and tax revenues that will be created during and after a brownfield cleanup. Several members of this subcommittee must recognize this fact, because they are cosponsors of H.R. 280, the Brownfields Redevelopment Enhancement Act. This bill would streamline the Federal grantmaking process for States and tribes, and make brownfield-related environmental cleanup and economic development activities eligible for community development block grant assistance. We are reviewing this bill now, and I feel certain that ICSC and the Roundtable will be able to formally endorse this legislation in the near future.

Last year, ICSC and the Roundtable endorsed a proposal originated by Chairman Turner. The Brownfields Revitalization Act, formally H.R. 4480, would dedicate a limited dollar amount for tax credits tied to the cost of remediating brownfield contamination.

Congress is generally reluctant to create new tax credits. There is a well-founded worry that excessively generous tax credits would distort a healthy market. But that is not to say that tax credits cannot be carefully designed and targeted to address specific problems. As with the low-income housing tax credit program, the private sector would still provide much of the necessary funds for cleanup, but the availability of tax credits could tip the scales in favor of proceeding with a project rather than passing over an otherwise promising site.

Under Mr. Turner's proposal, which we understand will soon be reintroduced, the tax credits would only be available under projects conducted pursuant to a State-approved remediation plan. The bill helps leverage the capital necessary for cleanups by making these credits transferrable to third parties such as banks. The tax credits would be available for up to 50 percent of the remediation costs, including both demolition costs and the cost of cleaning up petroleum contamination. In my written statement, I go into more detail as to why these two aspects are so vitally important.

While the tax credit approach could benefit even large-scale remediation projects, I suspect that it would prove most valuable to small and medium scale cleanups where funding options can be even more limited. We should not underestimate the contribution that small-scale projects can make to the economic vitality of a community.

Another bill that we encourage Congress to pass is H.R. 877, introduced by Representative Weller, Representative Becerra and Representative Johnson of Connecticut. H.R. 877 would do three things to encourage brownfield cleanups. It would make Internal Revenue Code Section 198 permanent. Section 198 allows the expensing of brownfield cleanup costs, but it is currently scheduled to sunset at the end of this year. It would broaden the definition of hazardous substances in Section 198 so it covers petroleum, pesticides, lead paints and asbestos contaminants. Again, my written statement provides greater detail on why this is important. It would repeal the provision in the law requiring the recapture of the Section 198 deduction when the property is sold. Without this change, there is no real incentive.

In conclusion, the ICSC and Real Estate Roundtable urge Congress and this committee to explore tax incentives to induce the private sector to clean up and redevelop contaminated sites. We believe that a tax credit approach would stimulate economic revivals in numerous communities, and we encourage this committee to seriously consider such an approach.

In addition, we specifically endorse H.R. 877 and the Brownfield Revitalization Act of 2005, formerly H.R. 4480. If Congress passes these sound incentive proposals, the results will be the injection of new capital into rehabilitation projects. Many small urban-centered businesses will benefit resulting in substantial job creation and economic revitalization. Also, the viability of existing sites will improve and thus ease the pressure to develop greenfields, allowing for the preservation of more open space.

I thank the chairman and the members of the committee for this opportunity to appear before you today and look forward to your questions. Thank you.

[The prepared statement of Mr. Maurin follows:]

STATEMENT

OF

JAMES E. MAURIN

On Behalf Of

The International Council of Shopping Centers

And

The Real Estate Roundtable

TO

THE SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

OF THE COMMITTEE ON GOVERNMENT REFORM

OF THE

U.S. HOUSE OF REPRESENTATIVES

REGARDING

LANDS OF LOST OPPORTUNITY:
What Can Be Done to Spur Redevelopment At America's Brownfield Sites?

April 5, 2005

Testimony of James E. Maurin
Before the House Subcommittee on Federalism and the Census
April 5, 2005

Mr. Chairman and members of the Subcommittee, my name is James E. Maurin. I am a founder and current Chairman of Stirling Properties of Covington, Louisiana. Stirling Properties manages a real estate portfolio of over seven million square feet. At Stirling, we have revitalized at least half a dozen properties that included some portion that qualified as a brownfield. I am testifying here today on behalf of The International Council of Shopping Centers and The Real Estate Roundtable.

I am also Chairman of the International Council of Shopping Centers. Founded in 1957, the International Council of Shopping Centers (ICSC) is the global trade association of the shopping center industry. Its more than 50,000 members in the U.S., Canada, and more than 96 other countries represent owners, developers, retailers, lenders, and other professionals as well as academics and public officials.

Shopping centers are America's marketplace, representing economic growth, environmental responsibility, and community strength. In 2004, shopping center-inclined retail accounted for $1.9 trillion in sales, or 76% of all U.S. non-automotive retailing, and produced $84.3 billion in state sales taxes. Each month, 203 million adults shop at shopping centers - 94% of the adult U.S. population. In addition, there were 17.6 million retail and real estate leasing or "shopping center-related" jobs nationwide, about 14 percent of non-agricultural jobs in the United States.

In addition, I am honored to be a member of the Board of Directors of The Real Estate Roundtable. The Real Estate Roundtable is a federal policy organization comprised of real estate industry leaders. Its members are the Chairmen, Presidents or Chief Executive Officers of the nation's 100 leading commercial and multifamily firms, and the Managing Directors of major financial institutions. The Roundtable also includes the elected

membership leaders of Washington's major real estate trade organizations. It serves as the vehicle through which industry leaders come together to identify, analyze and advocate policy positions on issues important to real estate. Collectively, Roundtable members hold portfolios containing over 5 billion square feet of developed property valued at more than $700 billion.

Thank you for this opportunity to appear before you today.

OVERVIEW

Today, there is a hard won consensus on the many benefits of environmentally "recycling" entire properties so that they can be placed back into productive use. Indeed, the business case for this environmentally responsible form of development can be compelling. To be sure, there are continuing concerns among some investors and lenders about the uncertainties associated with this type of development. For that reason, in some cases, the availability of a relatively small number of *additional* dollars — committed to cleanup costs — can be the difference between a "Go" and a "No go" decision by the project investors. Nonetheless, the public policy trends at the local, state and federal level are generally positive. Government is finding a way to be part of the solution and not merely one of the perceived "barriers" to success.

Fortunately, policymakers at *all* levels of government are coming to agree that so-called "brownfield" properties present as much an *opportunity* as a problem. The opportunity is to combine real estate development with environmental restoration in such a way that the economics – not lawsuits – are the driving force behind the cleanups. Working in

partnership with our industry, mayors, state environmental officials and the EPA have all found constructive ways to increase the quantity and quality of brownfield redevelopment projects nationwide.

As the threat of excessive environmental liability recedes, the remaining problem with most well-located brownfield sites is a fairly simple one: *money*. Other things being equal, it costs more to cleanup and redevelop a brownfield that it does to simply buy and develop a "greenfield." Let me be clear. Real estate development, like any other business venture, will invest in projects only where the economic justify it. While many real estate developers are members of the communities in which they work and often have a vision for transforming their communities in an economic, aesthetic and socially positive way, if the numbers don't add up, it is very difficult to proceed with the project. Capital will be scarce and expensive and tenants may not be willing to pay the rent required to make the project a success.

One of the first things to be determined in any brownfield redevelopment is "does it make economic sense to put a development in this location." The private sector is often better equipped to make that determination than government officials on their own. If the private sector is not brought into the effort from the very beginning, market insights may be missed and costly mistakes could occur.

There are many new tools for those real estate companies and local communities seeking to redevelop their brownfield properties. These range from prospective purchaser liability relief to grant programs and tax incentives. Furthermore, many states have user- friendly brownfield programs in which the state provides prospective developers with helpful guidance as to how to go about acquiring, remediating and permitting. Today, we have

been asked to consider what the government can do to enhance the existing incentive structure that has arisen to encourage brownfield redevelopment.

While many brownfields are candidates for re-development, not every brownfield presents a realistic real estate opportunity. The three most important considerations of any real estate deal are, as the cliché reminds us: location, location, location. Additionally, zoning, infrastructure, transportation, neighboring properties, proximity of available workforce are other considerations that come into play. If a brownfield is not strategically located it does little good to target it for redevelopment through government incentives. We don't think brownfield policies can — or should — transform a dog of a property into a goldmine. Instead, we believe appropriate incentives can help bring an otherwise sound development project out of the shadows of environmental stigma so that it can compete on a level playing field with other alternatives available in the marketplace.

Role for Federal Policy in Helping to Ensure the Success of State Brownfield Programs

Following a series of national stories highlighting dangerously polluted sites, Congress passed the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund Act). With its unprecedented use of a combination of strict, retroactive and joint-and-several liability, Superfund made every past and present property owner fully responsible for all costs to clean up environmental contamination. Unfortunately, no one predicted at that time what later became very apparent: no one wanted to purchase and redevelop contaminated property when ownership meant overwhelming Superfund liability.

Superfund was intended to be a tough response to tough sites. At the time, little thought was given to how to handle lightly or partially contaminated properties. It took several years for the federal government to admit that most sites were not heavily contaminated and could be dealt with in a more cooperative manner than with traditional Superfund sites.

During the 1980s and 1990s a number of states, principally those with a history of industrial and manufacturing activity, began experimenting with voluntary clean up programs. When responsibly administered, these programs proved to be winning propositions. They were a win for local communities looking for redevelopment and the economic stimulus and jobs that come with new investment. They were a win for the environment as polluted sites were cleaned up after lying dormant for decades. Finally, they were a win for the new breed of real estate companies that had business plans designed to redevelop property that was stigmatized by historic pollution but which could be cost-effectively "recycled."

While these state programs began to show measurable progress in the cleanup of brownfield sites, federal policymakers struggled to ensure a constructive role for the EPA. Years of careful negotiation and balancing of sensitive interests came to a very positive conclusion on December 20, 2001, when the House adopted (unanimously) and the Senate also passed "The Brownfields Revitalization and Environmental Restoration Act of 2001" (BRERA). President Bush signed the bill into law on January 11, 2002 declaring it an example of "the best of Washington" — a model for what bipartisan environmental policymaking can achieve.

One aspect of the new Brownfields legislation has been to codify many elements of the state-federal partnership agreements — known as Memorandums of Understanding (MOU) or Memorandums of Agreement — that govern EPA's role in supporting these state voluntary clean-up programs. While these MOUs initially suffered from an impulse toward micro-management on the part of EPA, that is no longer the official *policy* of that Agency regardless of whether some individuals or offices behave otherwise.

Certainly, there remain incidents of federal or state officials not working together constructively on brownfield issues. Nonetheless, the general trend line has been *very* positive over the past few years.

Other Key Elements of the new Brownfields Law

The new Brownfields law modified CERCLA, the original Superfund liability law, to encourage brownfield development by providing federal liability relief to prospective purchasers of brownfield properties and to persons who undertake cleanups of these properties under state law. It also authorizes funding both to state brownfield programs and to local governments that seek to return brownfield properties to productive use. This relatively new law serves two functions. First, it creates a funding mechanism to assist state and local government efforts to redevelop specific brownfield sites and to aid states in administering their voluntary cleanup programs. Second, it provides relief from liability under CERCLA for new purchasers of contaminated properties, property owners and others who conduct cleanups under voluntary cleanup programs, as well as the owners of properties that are affected by contamination migrating from contiguous sites.

In the past, concerns about CERCLA liability have discouraged many property owners, developers and lenders from getting involved with brownfield projects. BRERA's liability reform provisions are intended to allay those concerns by providing substantial protection for new purchasers and property owners undertaking voluntary cleanup. But the liability reform protections are not absolute: each comes with qualifications and exceptions, so that the federal government may take enforcement action in unusual cases. Part of this new regime is an updated benchmark for determining when a purchaser of property may take title free of past pollution liabilities. Part of the regulatory process for clarifying this new benchmark was the development of new purchaser due diligence requirements, known as the All Appropriate Inquiry standards. Notably, ICSC and RER participated in the discussions that led to these new standards. Although still not perfect, the very existence of liability protections (even though incomplete) has begun to encourage purchasers and developers to undertake brownfield projects.

What Remains To Be Done

Given these recent improvements in the situation, what is left for the federal government to do in order to avoid any more lost opportunities? Many have argued that the EPA Brownfields Program is under funded and that hundreds of worthwhile projects have been turned down for cleanup-related grants in the past year alone. BRERA added section 104(k) to the Superfund law and thereby authorized up to $200 million in annual funding. However, in Fiscal Year 2004, these grants totaled only about $75 million. Clearly, there is a shortfall in the funding available under this law to local governments, states, Native American tribes and non-profit organizations.

And state contributions, while vital, also have often been less than completely

dependable. For example, it has taken the state of New York over 18 months to agree to release $30 million worth of cleanup-related funding that had previously been set aside for brownfields. Fifty-two projects across the state have had their initial funding, for such activities as site assessment and planning, delayed. This financial uncertainty is a major reason why many developers refuse to consider participating in brownfield redevelopments.

The Federal and State governments should reconsider their tentative financial support for brownfield redevelopment. Properly conceived, brownfield redevelopments are *investments*, whether undertaken by the public or private sector. And there are few investments of public dollars that produce such a positive economic and environmental dividend. A simple calculation of how much it costs the federal Treasury to offer a grant, a loan, or a tax incentive is incomplete without factoring into the equation the future jobs and tax revenues that will be created during and after a brownfield cleanup.

A recent study by the U.S. Conference of Mayors found that brownfield cleanups led to an increase of $90 million in local tax revenues in 45 cities. Cleanups also were responsible for helping to create over 83,000 new jobs in 74 cities. A survey of 150 cities estimated that cleaning up their brownfield sites would produce as much as $1.9 billion in new tax revenues and nearly 600,000 jobs. ["Recycling America's Land Report: A National Report on Brownfields Redevelopment, Volume IV"]

With so much at stake, local governments have been eager to work with private developers to revitalize brownfields. This does not alter the fact that developing a brownfield site is more complex and costly than developing a comparable uncontaminated site. Obviously, economic incentives can make the difference.

One method that has been discussed for bolstering the existing federal grant and loan program for non-profits and state entities is to offer tax incentives to offset the costs of cleanup by private companies. Many developers have experience with the federal Low Income Housing Tax Credit program. Building low income housing, with its lower rents and reduced sales prices, is generally a less attractive investment opportunity when compared to middle or upper income housing on the same site. So the Tax Reform Act of 1986 offered developers incentives in the form of tax credits against the income from low income housing. Developers may sell the credits to other investors to raise additional capital. By reducing the amount of borrowing required to acquire or rehabilitate residential units, tax credits contribute to the affordability of housing. This program has unquestionably resulted in a tremendous number of low income housing units being built and these units now are found across the country in almost every community.

Congress is generally reluctant to create new tax credits. There is a well-founded fear that excessively generous tax credits would distort a healthy market. But that is not to say that tax credits cannot be carefully designed and targeted to address specific problems. Last year, ICSC and the Roundtable examined a proposal originated by Chairman Turner, The Brownfield Revitalization Act (formerly H.R. 4480), which would dedicate a limited dollar amount for tax credits tied to the costs of remediating brownfield contamination. We feel that this proposal has the potential to stimulate numerous small and medium cleanup projects around the country. As with the Low Income Housing Tax Credits program, the private sector would still provide much of the necessary funding for cleanup. But the availability of a tax credit could tip the scales in favor of proceeding with a project, rather than passing over an otherwise promising site.

Brownfield Revitalization Act of 2005 Summary (formerly H.R. 4480)

Under this proposal, which we expect to be reintroduced soon, tax credits would be available for up to fifty percent of the remediation costs, including both demolition costs and the cost of cleaning up petroleum contamination. Later, I will go into more detail as to why these two aspects are so important. The tax credits only would be available under projects conducted pursuant to a state-approved remediation plan. Making these credits transferable to third parties, such as banks, would leverage the capital necessary for cleanups.

Last year's proposal would allocate up to $1 billion in tax credits among the states based on population. State development agencies would be authorized to administer the program. These credits would be further limited to redevelopment projects within a jurisdiction that includes at least one census track with poverty in excess of twenty percent. The states would apply various criteria to determine eligible projects, such as the extent of contamination remediated, the poverty at the location of the project, the number of jobs created, the position of the property within the central business district and the owner's financial commitment for redevelopment.

While the tax credit approach could benefit even large-scale remediation projects, I suspect that it would prove most valuable to small and medium scale cleanups where funding options can be even more limited. We should not underestimate the contribution that small scale projects can make to the economic vitality of a community.

A second valid approach to creating sufficient incentives for brownfield remediation would be to extend Section 198 of the Internal Revenue Code which allows the expensing

of cleanup costs. Even better, as a method to increase economic certainty, would be to make the expensing provision permanent. Indeed, H.R. 877, introduced by Rep. Weller, Rep. Becerra and Rep. Johnson (CT), would accomplish precisely that, and more. H.R. 877 would do three things:

- Make permanent Internal Revenue Code Section 198, which allows the expensing of brownfield clean up costs, but is currently scheduled to sunset at the end of 2005.
- Broaden the definition of "hazardous substances" in Section 198 so it covers petroleum, pesticides, lead paint and asbestos contaminants.
- Repeal the provision in the law requiring the recapture of the Section 198 deduction when the property is sold.

Making Section 198 Permanent

Redevelopment of existing sites and properties is an important component of any community's development plans. The U.S. Conference of Mayors estimates that there are up to 600,000 brownfield sites across the country. The Government Accountability Office calculates that there are up to one million abandoned or underutilized sites. Development of these sites would help restore many blighted areas, create jobs where unemployment is high and ease pressure to develop beyond the fringes of communities. Small urban-centered businesses often benefit most directly by this redevelopment. Many brownfield properties are located in inner cities -- precisely where many businesses want to be. The economics are often right. Critical infrastructure, including transportation, is already in place and the workforce is in close proximity.

The Community Renewal and Reinvestment Act of 2000 removed the geographic targeting requirements of Internal Revenue Code Section 198. This allowed developers of brownfields to expense the cleanup costs wherever brownfields are located. Prior to this change, these clean up costs had to be added to the purchase price of the land ("capitalized") unless the contaminated site was located in an empowerment zone or other designated low-income area.

Capitalization means there is no deduction available for these expenses until the property is sold. Since this could be several years, this increases the overall tax burden of the redevelopment project. This higher tax burden hinders redevelopment efforts — particularly in areas that need them most.

We are pleased that in 2000 Congress determined that these clean up costs should be deductible in the year they are incurred and do not have to be capitalized. However, for revenue reasons, Congress has scheduled the expensing provision to expire in 2005. We strongly believe cleanup cost expensing for all brownfields should be extended permanently.

Broadening the Definition of "Hazardous Substance"

In addition to extending Section 198 permanently, we also believe Section 198 should be amended to work more as Congress intended. One such amendment would be to broaden the types of hazardous substances that are eligible for expensing treatment to include petroleum, lead paint, asbestos and pesticides.

The current version of IRC Section 198 relies on the term "hazardous substance" used in the Superfund law (CERLCA) to identify which contaminated sites would be eligible for tax relief: Section 198(c)(1)(A)(iii) defines a "qualified contaminated site" as one "at or which there has been a release (or threat of release) or disposal of hazardous substance." The term "hazardous substance" is defined in Section 198(d)(1) to have the same meaning as in sections 101(14) and 102 of CERCLA. Section 198(d)(2) further states that the term "hazardous substance" shall not include any substance for which a removal or remedial action is not permitted under section 104(a)(3) of CERCLA.

At first blush, it appears logical for the drafters of Section 198 to simply borrow the term "hazardous substance" as used in CERCLA, the principal federal statute concerning environmental remediation, rather than coming up with a new term or a new definition. But, the problem created by this approach is that it assumes that the CERCLA definition of the term is broad enough to encompass all types of toxic materials that might be found at a brownfield site. That is not the case.

When CERCLA was adopted in 1980, Congress made the decision that it did not want the federal Superfund used to clean up certain types of substances – such as petroleum and various pesticides. Similarly, Superfund money was not to be spent cleaning up the interiors of buildings. While the decision not to authorize the spending of federal funds on these types of cleanups had significance for the administration of the Superfund program, the same rationale does not apply to a statute intended to provide a tax incentive to private parties cleaning up brownfield properties.

When CERCLA was adopted in 1980, the term "hazardous substances" was expressly defined to exclude "petroleum." Also, although the term "hazardous substance" was

defined to include a variety of substances considered toxic under various other environmental laws, it did not include most pesticide products and a variety of other toxic materials.

There were various reasons for the decision to exclude from the definition of "hazardous substance" certain materials which are nonetheless considered toxic. In the case of petroleum contamination, for example, Congress made a decision to rely on other statutory mechanisms to effectuate cleanups. In 1984, Congress adopted subtitle I of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6991, et seq., which addressed the cleanup of releases from underground storage tanks, many of which contain gasoline, fuel oil, or other petroleum products. In 1990, Congress adopted the Oil Pollution Act, 33 U.S.C. Section 2701, et seq., to address oil pollution into navigable waters. Thus, the exclusion of "petroleum" from the CERCLA definition of "hazardous substances" was not an indication that Congress believed that petroleum pollution did not need to be cleaned up. Petroleum simply was covered in other statutes.

Petroleum and pesticide pollution are common at brownfield sites. Petroleum products in the forms of fuel oil, heating oil or gasoline, were often used at these sites. Indeed, these materials were often stored in above-ground or underground tanks. Also, some of these sites have been contaminated by migrating gasoline spills from nearby service stations.

Pesticide residues are also frequently found at brownfield sites. Pesticides were often used to control weeds or insects at these sites when they were operating industrial plants. Moreover, some of these sites may be contaminated by pesticides run-off from other properties. While it may make sense not to authorize the use of federal funds under the Superfund program to clean up petroleum and pesticides, these substances often have to

be cleaned up at brownfield sites before those properties can be returned to beneficial use. There is no reason not to extend the same type of tax incentive to a private party who is cleaning up petroleum waste or pesticide residues on a brownfield site as to one who is cleaning up other types of contaminants.

Asbestos and Lead Paint

Also, Congress in adopting CERCLA in 1980 did not want EPA to spend Superfund dollars cleaning up the interior of buildings. Accordingly, Congress adopted section 104(a)(3)(B) of CERCLA which prohibited EPA from cleaning up the interior of structures. Congress did not accept this limitation because it believed that contaminated interiors did not require cleanups. Rather, Congress believed that the use of the limited funds set aside for Superfund cleanups should be prioritized to deal with contamination that had escaped into the general environment. Once again, Congress used other federal programs to address interior contamination, such as the asbestos regulations under the Clean Air Act.

IRC Section 198, as currently drafted, states that the term "hazardous substance" does not include a substance that EPA would not be permitted to cleanup under section 104(a)(3) of CERCLA. Because of the applicability of the limitation in subsection 104(a)(3)(B), no expensing is allowed for the removal of asbestos, lead paint or other hazardous materials inside the buildings that are located at otherwise qualified sites. But brownfield restoration often involves the cleanup of existing buildings on the property. Expensing of costs to clean up buildings would give developers more reason to invest in brownfield properties. Thus, the expensing treatment IRC section 198 should be expanded to cover the removal of hazardous substances from buildings.

Recapture

Finally, another improvement that H.R. 877 would make to Section 198 is to repeal the recapture requirement of Section 198(e). Currently, any qualified environmental remediation expenditure expensed under Section 198 is subject to recapture as ordinary income when the property that was contaminated is sold or otherwise disposed of.

In effect, the amount expensed as a cleanup cost is treated as depreciation on IRC Section 1245 property. Thus, when the property is sold, gain to the extent of the cleanup cost deduction is treated as ordinary income.

Example

In 2001, Owner purchased an acre of land that was contaminated with a hazardous substance. The land cost $10,000 and Owner spent $5,000 in remediation expenses. Currently, he is allowed to claim a current deduction for the $5,000 instead of adding it to his basis in the land. If he sells the land for $16,000, he would be required to treat $5,000 of his $6,000 gain ($16,000 sale proceeds less $10,000 cost) as ordinary income taxable at 39.6%. The remaining $1,000 gain would be taxed at 20%.

When Does Recapture Matter?

In the example above, if Owner sold the land the year after he cleaned it up, he would receive little or no benefit from having deducted the clean up costs. This immediate repayment to the government leaves Owner with little tax incentive to clean up the

property.

We believe that a more appropriate result would be to treat any gain in excess of Owner's original investment/acquisition cost in the property ($5000 in this case) as capital gain by repealing the recapture requirement. This provides an incentive for Owner to clean up the property without having the deduction effectively rescinded after the improvement is made.

If the clean up expenditure were recaptured as a capital gain, rather than as ordinary income, each party is in a stronger position. It would allow the government to recover a portion of its tax incentive from the developer, the developer retains a significant incentive for bearing the expense and associated risks of the cleanup activity, and the community receives an improved property with the prospect of job creation.

This treatment would be particularly helpful for entrepreneurs who acquire brownfield properties with the intent of remediating the contamination and then selling the improved property shortly thereafter. If a developer were to acquire a brownfield, clean it up and restore it to a viable market use, but then immediately lose the benefit of the cleanup deduction at the time of sale, the developer is left with little, if any, incentive effect. If the recapture provision were repealed, Section 198 would become a far better redevelopment incentive than it is now.

Conclusion

In conclusion, ICSC and the Roundtable urge Congress and this committee to explore the beneficial tax incentives as I have discussed. We believe that a tax credit approach could

stimulate economic revivals in numerous communities and we encourage this committee to seriously consider such an approach. In addition, we specifically endorse H.R. 877 and the Brownfield Revitalization Act of 2005, formerly H.R. 4480. If Congress passes these sound incentive proposals, the result will be the injection of new capital into rehabilitation projects. Many small, urban centered businesses will benefit resulting in substantial job creation and economic revitalization. Also, the viability of existing sites will improve and ease the pressure to develop "greenfields" allowing for the preservation of more open space.

Because of the wide diversity in circumstances at the hundreds of thousands of brownfield sites in America, it should be clear that one size does not fit all. Therefore, a range of incentives would be the optimal solution. Tax credits, expensing, grants and revolving loans may all have their place, depending on the project, the local government's technical and financial capability, the surrounding community's needs.

I thank the Chairman and the members of the committee for this opportunity to appear before you today.

Mr. TURNER. Thank you.
Mr. Philips.

STATEMENT OF JONATHAN PHILIPS

Mr. PHILIPS. Mr. Chairman, my name is Jonathan Philips, and I represent Cherokee Investment Partners, based in Raleigh, NC. Thank you for the opportunity to testify today.

I would like to cover three basic topics. First, I want to provide you with an introduction of Cherokee, who we are and what we do. Second, I want to share with you some of the lessons learned regarding brownfield revitalization in communities all across this country. Finally, I want to comment on two critical pieces of brownfield legislation introduced during the 108th Congress. Cherokee is the world's largest brownfield investor. We currently manage over $1 billion of assets and have acquired over 330 sites across 35 States, Canada and Europe since inception. Our investors, consisting of public pension funds and other institutional investors, have entrusted us to deploy over $1½ billion of equity and debt capital toward brownfield revitalization. We will spend hundreds of millions to clean up pollution at the sites in our current portfolio unlocking a potential of over $4 billion of further redevelopment. Our projects range in size from cleanup and redevelopment of a portfolio of 68 gas station pads, with extensive petroleum hydrocarbon contamination, to redevelopment of the Meadowlands in New Jersey, a 1,300 acre site with eight former landfills with remediation expenses of $230 million and a total project cost of $1 billion.

In fairness, though, we rarely undertake a project alone. One of the key factors of Cherokee's success has been our willingness to enter into public-private partnerships to achieve larger community goals. An example is the announcement of the national joint initiative between the U.S. Conference of Mayors and Cherokee to help mayors identify contaminated properties with the greatest potential for redevelopment and match them with capital, risk management experience and revitalization expertise.

In partnership with the U.S. EPA and local governments, we have made strides toward cleaning up America's contaminated lands. However, significant barriers prevent the revitalization of the vast majority of this Nation's brownfields. Historically, owners of contaminated real estate often have focused resources on avoiding liability rather than site cleanup. As the true cost of mothballed sites have become known, the public and private sectors have worked together to create new mechanisms to revitalize brownfields. These stakeholders have effectuated important changes in court rulings, environmental laws, regulations and enforcement action, urbanization, insurance, and availability of financing vehicles to address the cleanup and reuse of these properties. Just as our Nation required the public and private sectors, working together, to produce the important reforms of the past several years, a similar partnership will continue to be important to ensure an acceleration of the rate of cleanups across the country. The economic drivers of brownfield redevelopment are similar to those found in typical greenfield development, but environmental contamination introduces several costs, timing and liability hurdles

to success. Adding to the complexity and costs associated with cleaning up existing contamination, brownfield developers have difficulty using financial leverage, as has been addressed already today in this panel, because brownfield appraisal is generally low and banks require lower loan-to-value ratios to protect themselves from the risk of having to own and manage stigmatized properties with questionable value. For this reason, the availability of public debt financing can be critical to making projects numbers work. High equity requirements combined with increased expenses due to remediation costs can lead to low-return investment. In 1998, the Urban Land Institute reported that the average rate of return for brownfields was under 3 percent, well below that of greenfield projects.

When assessing how brownfield investment compares with other real estate investment decisions, it is clear that brownfields fall within the upper range of the risk return spectrum. One of the lessons of this data is that, if we wish to foster a more active private sector participation in the cleanup of our Nation's polluted land, we have two levers to adjust. One can either lower the risk associated with tackling a brownfield project or increase the potential project return. Absent one or both of these factors, most traditional developers will follow the easy road: content to make sizable returns converting the next farmstead to suburban sprawl on that proverbial edge of the town.

Given what we know about the causes of the problem, how do we move beyond our current situation where some sites are being redeveloped while literally hundreds of thousands of others continue to languish? A friend once told me that, for every complex difficult problem, there is usually a simple solution, and it is usually wrong. I think that is true for the brownfield issue. If there were one simple solution, we probably would have found it and enacted it long ago. It is clear to me that the brownfield problem is a complex continuum and merits some categorization. Some sites are already economically above water; that is to say that, without additional incentives, those sites will likely be revitalized.

Other sites are marginally under water, and with some coordinated efforts, creativity and a modest economic push, these sites would likely be redeveloped within a reasonable period of time. And then there are substantial underwater sites typically located in less attractive markets involving unusually large risks and/or requiring more substantial economic partnership.

When identifying a national prioritization of these categories, policymakers have certainly differed. Regardless of one's views, we would be doing our country a disservice by not understanding this brownfield market segmentation and crafting policies that target them appropriately. Given the complexity of this problem, the solution must also be multifaceted with a mix of Federal, State and local incentives focused on both reducing risk and increasing project returns. Fortunately, America has built a solid foundation over the past few years to attack this problem. The EPA grants program has been an asset to communities across this Nation. In addition, programs such as Section 198 enacted in 1997 and the provisions of the brownfield law enacted in 2002 provide creative tools to crack the brownfield problem. But as good as these tools

are, we know that we need to do more if we are to solve this problem in our lifetimes. Today, the Federal Government's challenge should be to build on this foundation and to look for bold, innovative ways to reduce barriers and create market-based incentives to attract significant volumes of private capital to help remediate and redevelop our Nation's brownfields.

In the last year, Congress has considered two critical pieces of tax legislation that do just that. These bills are H.R. 3527, sponsored by Congresswoman Nancy Johnson and co-sponsored by Chairman Turner, and H.R. 4480, sponsored, too, by Chairman Turner. The first bill, H.R. 3527, was signed into law last year as part of the Jobs Act. This bill amends the Tax Code to encourage investment in contaminated lands by allowing tax exempt entities to invest in the revitalization of highly contaminated sites without the risk of incurring unrelated business income tax penalties. These penalties had driven our largest real estate investors away from brownfields. This law eliminates the unintended penalties and makes brownfield investment more attractive for the managers of an estimated 60 percent of the institutional capital in this country, tax exempt investors such as pension funds, endowments and foundations.

The second bill, H.R. 4480, establishes a transferrable tax credit that would create a critical early financing solution and allow pioneering developers to attract more capital with the equity created by that credit and revitalize otherwise economically marginal projects. Such a transferrable credit will serve to further unlock the large quantity of environmentally impaired sites around the Nation and will dramatically accelerate the rate at which brownfield sites are revitalized in America. Taken together, these two pieces of tax legislation have the potential to prompt cleanup of more brownfield sites in the next 5 years than in the last 50 years combined.

Allow me to conclude with a startling statistic: The U.S. Chamber of Commerce estimates that, at the current rate of remediation, it will take 10,000 years to clean up our Nation's brownfields. Clearly, we can and must do better. I sit before you today as testament to the fact that with perseverance, patience, integrity and prudent financial and risk management, the private sector can play a substantial role in cleaning up the pollution of this country's industrial past. This problem is too big for any one organization, government or market sector to take on single handedly, that is, if we want to have a chance at solving this problem in our lifetimes. Congress must be bold, and we commend Chairman Turner's leadership. The transferrable tax credit provisions in Chairman Turner's legislation will dramatically accelerate the rate and geographic scope of brownfield revitalization in America. Nearly every Member of Congress struggles with the problem of brownfields within their own district. I know many of you—many of your colleagues also do as well. We look forward to working with Chairman Turner and the members of this subcommittee to continue to explore new ways to accelerate brownfield cleanups. Please do not hesitate to call upon us for these legislative endeavors or for assistance with specific sites that come to your attention.

Mr. Chairman, members of the committee, it has been an honor and a privilege to testify here today. I am happy to answer any questions. Thank you.

[The prepared statement of Mr. Philips follows:]

Testimony of Jonathan Phillips, Cherokee Investment Partners
Before the House Government Reform Subcommittee on Federalism and the Census
April 5, 2005

Mr. Chairman, members of the Committee, my name is Jonathan Philips and I represent Cherokee Investment Partners based in Raleigh, North Carolina. I feel privileged and humbled to be here and want to thank you for the opportunity to testify today.

I'd like to cover three basic topics in my testimony.

First, I want to provide you with an introduction to Cherokee Investment Partners – who we are and what we do.

Second, I want to share with you some of the lessons that we have learned regarding brownfield remediation and redevelopment in communities all across this country. I will use the term "brownfield" in my testimony to refer to the definition provided in Section 101(39)(a), without exclusion.

Finally, I want to comment on two critical pieces of brownfield tax legislation introduced during the 108th Congress – H.R. 4480, sponsored by the Chairman of this Subcommittee and H.R.3527, sponsored by Congresswoman Nancy Johnson and co-sponsored by Chairman Turner.

Before beginning, I would insert one note on what I have intentionally *not* discussed in substance today. The problem of brownfields across the nation has been increasingly studied and documented by researchers and academicians. The benefits of brownfield revitalization on the local, state and federal levels have also begun to be understood and gain currency in the public realm. In fact, several of my distinguished colleagues from government, industry and NGOs have or will serve as witnesses before this Subcommittee and will undoubtedly offer detailed testimony on these very topics. Fewer people, Mr. Chairman, will likely address the Subcommittee on how private entities analyze and tackle brownfield projects. Henceforth, I have focused my comments on a private sector perspective and explanation of brownfield finance and redevelopment.

I. Cherokee Investment Partners - Overview

Cherokee Investment Partners, LLC is the world's largest investor in brownfield redevelopment. Founded by CEO Tom Darden and John Mazzarino, Cherokee began acquiring contaminated real estate in 1990. We currently manage over $1 billion of assets and have acquired over 330 sites across North America and Europe since inception. We have purchased a wide range of properties including brick companies, agricultural and pharmaceutical manufacturing facilities, lead-based paint facilities, steel manufacturing and processing plants, textile mills, state and federal Superfund sites, landfills and neighborhoods with widespread blight; and remediated an even wider range of environmental impairments. In doing this, sellers and communities alike have seen the first-hand benefits of environmental restoration and community revitalization. We are able to assume responsibility and ownership

for such complex and potentially risky projects for a number of reasons—some of which I will touch on today. One of the more important factors relates to the sheer quantity and diversity of sites we acquire. Buying large quantities of contaminated sites allows us to pool risk. This pooling of risk, or "portfolio effect," helps us soften the economic impact to our investors when a project does not perform according to our expectations, as inevitably happens in the brownfield investment universe. This portfolio effect has helped Cherokee successfully raise capital to meet its mission. We will spend hundreds of millions to clean up pollution at the sites in our current portfolio, unlocking a potential of over $4 billion of further redevelopment. Our sellers have included Fortune 500 companies, financial institutions, private equity funds, governments and private owners.

- None of our remediated, redeveloped sites has ever generated any legal or regulatory conflict.
- None of our indemnified owners or users has ever incurred any future environmental liability.
- None of our indemnified sellers has ever paid fines, penalties, or costs stemming from environmental issues.
- No seller has ever paid for a remediation cost over-run for known or unknown contamination -- Cherokee has always fully paid any over-run costs.

Cherokee deploys more capital toward environmental cleanup than all but a few entities, public or private, in the country. Further, we are not aware of any private organization in the world that *voluntarily* cleans up more pollution than Cherokee.

The following PowerPoint presentation [Exhibit 1] offers an overview of Cherokee Investment Partners, as well as descriptions of specific transactions that are mentioned in my testimony. Our projects range in size from cleanup and redevelopment of a portfolio of 68 gas station pads with extensive petroleum hydrocarbon contamination to remediation and redevelopment of the Meadowlands landfill in New Jersey, a 1,300-acre site with eight former landfills and with remediation expenses of $230 million and a total project cost of $1 billion.

Cherokee raised its third institutional fund (Fund III), a dedicated brownfield fund comprising $620 million of equity, in 2003; its investors consist primarily of public pension plans and other, traditionally conservative, institutional investors. Fund III equity commitments, with leverage, provide approximately $1 billion of new capital for deployment over a three to five year period throughout North America and Western Europe.

Cherokee is headquartered in Raleigh, North Carolina with additional offices in New Jersey, Denver, Austin, Canada and London.

A. Cherokee's Philosophy

Cherokee Investment Partners' philosophy is to buy environmentally impaired property, fully aware that large sums, the magnitudes of which are often unpredictable, will be needed to overcome the challenges associated with impairment and liability. In all cases, and contrary to the positions taken by some owners of brownfields, we firmly believe that there is no better way to eliminate a liability than to aggressively remediate the underlying pollution. We've found that communities and regulators certainly respond well to this straightforward and aggressive approach. The faster that pollution is cleaned up, the faster we can return stigmatized, underutilized properties to the stream of commerce as transformed and revitalized community assets.

Cherokee accepts projects that traditional investors often reject and actively looks to transform communities where urban blight and environmental contamination impede economic growth and community redevelopment.

Cherokee's philosophy includes promoting sustainable redevelopment of the brownfield properties we remediate and providing net positive social, economic and environmental improvements. We have achieved a strong reputation for integrity and sound management advice coupled with investment, risk management and environmental expertise. Our approach concentrates on the factors contributing to the financial success of an asset, along with the risks that threaten it.

We are able to pursue these goals because our partners have entrusted us with capital to invest. We respect our capital providers and take our fiduciary responsibilities seriously. Our goal is to make our investors, partners, customers and employees proud to associate with Cherokee.

For our work in helping to revitalize this nation's brownfield sites, Cherokee has received numerous awards and honors in recent years including the 2001 Phoenix Award and the 2004 North Carolina Sustainable Business Award for its efforts at improving the environment and its leadership in sustainable development. Environmental groups, smart growth advocates and mayors across the country have endorsed Cherokee's practices and its role in revitalizing America's brownfields.

B. Public-Private Partnership

Cherokee rarely undertakes a project alone. I believe that one of the key factors of Cherokee's success has been our willingness to enter into public-private partnerships to achieve larger goals.

Brownfield projects are difficult at best. Without an active community desire to transform a brownfield area, the project is less likely to succeed. Knowing this, Cherokee focuses its resources in the places where our participation is actively welcomed.

Because of the high cost of remediation and low values often associated with impaired property, municipalities often struggle to bridge the gap between capital resources and the

cost of brownfield redevelopment. Cherokee aims to work with municipalities, pairing our financial resources and remediation expertise with public initiatives to clean up and reposition properties for redevelopment. This strategy allows enhanced community planning and encourages creative land-uses looking far into the future.

Many of our public-private partnerships involve properties in urban infill locations – their redevelopment catalyzes economic growth without further greenfield loss. Using a public process that includes town meetings and community-wide charrettes, Cherokee has formed community partnerships that have added economic vibrancy to previously neglected neighborhoods and brought large-scale revitalization and restoration to languished land. We are proud that many of the old factories and landfills we clean up are becoming sustainable, mixed-use developments with mass transit links and other public amenities.

Recognizing the merit of these collaborative efforts, in 2002 the US Conference of Mayors presented Cherokee Investment Partners with their Outstanding Achievement Award for Excellence in Public/Private Partnerships. This award was followed in 2004 by the announcement of an unprecedented joint initiative between the U.S. Conference of Mayors and Cherokee to help mayors across the United States identify contaminated properties with the greatest potential for redevelopment and match them with the capital, brownfield expertise and experience of Cherokee.

II. Financing Brownfield Redevelopment

Significant barriers prevent the remediation and redevelopment of the vast majority of this nation's brownfields. While Congress has made strides to address this problem with the passage of the Section 198 tax provisions in 1997, the passage of the 2002 brownfield law, and last year's passage of the new tax provisions waiving the unrelated business income tax penalties on qualified brownfield transaction, there is still much that can and should be done.

In this section of my testimony, I will briefly address the underlying causes of the brownfield problem and the market dynamics that currently inhibit remediation and redevelopment.

I will then focus on two areas where I believe that Congress (as well as states and local governments) can have the biggest impact in encouraging brownfield revitalization: 1) creation of new financial incentives, and 2) other actions to encourage deployment of additional capital.

Finally, in this section of the testimony, I will provide a list of criteria that brownfield investors use to determine whether to remediate and redevelop a particular site. This list is critical since, I believe, it provides some insight to the direction the markets will head if Congress, the states, and/or local governments provide additional financial incentives and/or other actions to encourage deployment of additional investment capital in this field.

To further illustrate the way in which brownfield investors make on-the-ground decisions about particular sites, I will present a case study of the ICI/O'Brien Industrial Park, a portfolio of contaminated sites that Cherokee selected for investment in 1999.

A. Introduction

Historically, owners of contaminated real estate often focused resources on avoiding liability rather than site cleanup. The consequence was stagnating properties, economic malaise, eyesores, and conditions hazardous to health in otherwise growing urban neighborhoods. Secondary effects have been documented to include increased crime, lower tax revenues, job loss and surrounding blight.

Among the most historically popular tools used by sellers to avoid liabilities included variations on what has been termed "mothballing." Corporate mothballing typically involved a legal team talented in producing endless delays, a chain-link fence, and techniques to continue token and inefficient "operations" with the objective of avoiding requisite environmental assessments and attendant regulatory scrutiny and enforcement actions. Owners have perceived that it is economically and "reputationally" preferable to avoid environmental testing and investigation, so as to delay the greater liability of having been legally "put on notice." This pattern of owner response to environmentally contaminated properties ensured that the nation's brownfield inventory ballooned.

As the true costs of these delays and mothballed sites have become apparent, the public and private sectors have worked together to create regulatory and financial mechanisms to revitalize brownfield sites. These stakeholders have effectuated important changes in court rulings, environmental laws, regulations and enforcement action, urbanization, insurance and availability of financing vehicles to address the cleanup and reuse of these brownfield properties. Both the public and private sectors maintain a strong interest in the cleanup of brownfields and their restoration to productive use.

Just as our nation required both sectors, working together, to produce the important brownfield reforms of the past several years, a similar partnership will continue to be important to ensure an acceleration of the rate of brownfield cleanups across the county.

As the nation's largest and most experienced brownfield investor, we believe that without public-private partnerships, there can be little hope of reclaiming most of the sites that languish today.

Only those sites that are both trivially contaminated and situated in the most attractive real estate locations are sure bets to receive the attention of developers who may be willing to tackle projects with marginally increased risks and substantial rewards. Unfortunately, we believe the vast majority of US brownfield sites are both more complicated and less economically attractive and are unlikely to be addressed under current market forces.

I believe that the environmentally-contaminated sites most plaguing to this country are more often than not either those which would produce net losses for the investors, or those with a risk-reward ratio that is significantly unattractive relative to commonplace, sprawl-producing greenfield development.

In either case, the problem stems from rational economic decisions based upon local market forces of supply and demand. If we are to concede that a wholesale, publicly funded cleanup of every contaminated site in the nation is not resource-feasible or easily implemented, we must innovate better ways to combine public and private resources to effectuate more cleanups more quickly.

The problem of brownfields can be greatly alleviated by creating a rational economic framework in which the private sector may operate, respond and be guided by well-considered, typically local, public decisions for prioritization of private-sector driven site cleanup. In an unsubsidized setting, market economics drive the cleanup decisions of these challenging sites. With public guidance, private forces can operate efficiently to produce revitalization in places where communities most need it, but where without such public incentive, revitalization may not occur.

Municipal officials and urban residents increasingly fight suburban sprawl by encouraging development of urban sites. Communities are supporting redevelopment of in-fill sites they previously avoided due to uncertain or complicated environmental issues. Although challenges remain, federal, state and local governments and private groups are collaborating to explore creative ways to remediate environmentally impaired sites. Cherokee Investment Partners is proud to have participated actively in many such efforts.

Companies whose core business is not real estate asset management and remediation or brownfield redevelopment can maximize shareholder value and redeploy resources elsewhere by selling underutilized and environmentally impaired properties to brownfield developers with proven and successful track records. By carving out underutilized and environmentally impaired properties, companies improve their liquidity and reduce their liabilities, thereby strengthening both the left- and right-hand sides of their balance sheets.

When companies want to maintain the use of such property pending cleanup, sophisticated buyers can structure sale-leaseback agreements. Sale-leasebacks are a relatively new and preemptive tool useful in the fight against what might otherwise become tomorrow's abandoned brownfields. By allowing non-intrusive cleanup to occur during a pre-determined lease-term, we are able to ensure that if the ongoing operation on the site were to depart, the site would have already been environmentally assessed, substantially remediated and in the hands of a community-friendly entity that is interested in seeing property revitalized for a future highest and best use. Best of all, the communities in which these "future brownfield sites" reside are benefited by locking in for the host communities the jobs and tax rates associated with the ongoing concern, in addition to the obvious and instant community and environmental benefits associated with the cleanup pf a polluted site.

B. Background - The Brownfield Market

Even more so than the broader real estate market, the brownfield market is disaggregated and local in nature. Lack of reliable information makes it difficult to estimate accurately participants and market size. According to the Environmental Protection Agency ("EPA") and the Office of Housing and Urban Development ("HUD"), approximately 500,000 industrial and commercial brownfields exist in the United States. The EPA's definition of brownfields includes only properties that have both environmental contamination and certain socioeconomic characteristics. Based on George Washington University research using EPA and HUD databases, it is likely that the value of this impaired real estate exceeds $600 billion in its current condition.

Corporations own most brownfield sites. Many companies are consolidating operations and closing facilities, while mergers and acquisitions produce additional surplus sites. Government agencies, individuals and financial institutions that unknowingly purchased or foreclosed on brownfield sites also own these properties. Still, there are those sites that were acquired by entities aware of the existing environmental conditions and inspired by the prospect of an attractive return on investment, only to discover that the properties challenges were too difficult to overcome, given the entity's limited track record in dealing with such properties.

Despite the significant increase in the number of brownfield redevelopments since the early 1990s, the brownfield market continues to experience excess supply (National Brownfield Association – Market Report, 2002). The imbalance between supply and demand results from several factors, including brownfield redevelopment economics, environmental liability potential, capital source limitations available for redevelopment (especially for large redevelopment), capital cost, transaction complexity and market inefficiencies in matching buyers and sellers.

C. Brownfield Redevelopment Economics

Brownfield redevelopment is a unique real estate development type. The economic drivers are generally similar to those found in typical real estate/greenfield development, but environmental contamination introduces several hurdles to successful economic redevelopment.

On the revenue side, the future sale price (i.e., exit price) of the land is a function of the highest and best use of the "clean" real estate parcel. Highest and best use values the real estate in accordance with the use that, at the time of appraisal, is likely to produce the highest economic return. On the cost side, the expenses associated with brownfields redevelopment include the purchase price, closing costs, remediation and risk management costs, capital expenditure (e.g., infrastructure, building improvements), soft costs (e.g., legal, rezoning, engineering and consulting) and sales costs (e.g., marketing and/or commissions).

Remediation cost (i.e., cleanup cost) is not the only hurdle associated with contaminated real estate; as important for the developer is the potentially larger environmental liability and the difficulty of finding debt project financing. Brownfield developers have difficulty using

financial leverage (e.g. debt) because brownfield appraised value is generally low, and banks require lower loan-to-value ratios to protect themselves from the risk of having to own and manage stigmatized properties. As a result, the equity requirement for brownfield redevelopment is high. High equity requirements combined with increased expenses due to remediation costs often lead to low return on investment. In 1998, the Urban Land Institute reported that average rate of return for brownfields was under three percent, well below the rate of return for greenfields projects, which average in a range between 10 to 30 percent. Higher site development and financing costs, along with often significantly longer periods of time during which capital is invested (creating a riskier illiquid investment), contribute to the lower brownfields return rate. Low rates of return on investment combined with high project risk and complexity requiring niche areas of expertise constitute a significant impediment to private sector brownfield development financing.

Another hurdle specific to brownfield transactions is that other dilapidated sites frequently surround individual brownfield sites. Successful redevelopment of an individual brownfield site is often contingent upon developing a master plan for an entire area, which may require the development team to buy adjacent sites from multiple owners. The complexity of dealing with multiple sellers adds to the risk inherent in brownfield development projects. In some cases, buying additional surrounding parcels is the only way for the project to offer the potential to generate, on a blended basis, enough gain to offset the risks and costs associated with the core contaminated parcel(s). However, as more property is acquired on the perimeter of a contaminated site, the investor assumes greater assembly and market risks. For example, with a smaller, core contaminated parcel, a revitalization effort hinging on future market acceptance and absorption is less risky than investing in a geographic so large that the future transformed region would need to be significantly deeper to accommodate the newly created supply in the marketplace.

In spite of these challenges, the successes of Cherokee and others serves to strongly evidence that brownfield sites still have potential if broad community support exists to restore them, and creative development teams can structure the transactions to maximize the customarily low return. Brownfield investors and developers must think creatively about ways to complete a transaction that appears upside-down (i.e., higher cost than potential sale/exit value), using tools such as private equity funding, environmental insurance, public-private partnerships, Tax Increment Financing ("TIF") and other public financing components. Public financing helps lower the capital cost and thereby increase returns. Simply put, public incentive for private activity is necessary to remediate and revitalize the thousands of brownfield sites nationwide. Together, a private company can shoulder the investment and liability of clean up, while the host community receives the environmental benefits of a cleaned site and the community and economic benefits of revitalization.

D. Capital Sources and Cost

Background

The last stock market decline contributed to an increase in capital flow to the real estate market asset class in 2002 - an increased rate that has continued to present day. Both individual and institutional investors (e.g., pension funds, endowments and foundations) have increased their portfolio real estate allocation target. The real estate allocation is largely

comprised of class A office, hotel and development opportunities in strong markets. On the other side of the spectrum, "distressed" real estate receives significantly less allocation. Environmentally contaminated real estate is, for all practical purposes, non-existent in the division of the traditional, conservative, institutional real estate allocation.

Foreign institutions, particularly in Germany, have been increasing their investment in the U.S. real estate market (PricewaterhouseCoopers, 2003). As of September 2002, the total global real estate capital market was about $4.63 trillion. Non-institutional and institutional investors represented about $2.39 trillion and $2.24 trillion respectively. Out of the $2.24 trillion from institutional investors, $402.8 billion (18%) was equity and $1,841.4 billion (82%) was debt. The ability to attract such capital for a category of brownfield investments is driven by several factors, including the category's ability to diversify an institution's holdings, the possibility, if successful, to generate returns at least commensurate with what ordinary real estate investments might yield, there is a defined market in which here is no foreseeable shortage of deal flow and, perhaps in certain situations, an investor's particular interest in engaging in what may be deemed as "socially responsible" investing.

Equity
A very small portion of the $402.8 billion of real estate equity capital represents brownfield investment, due in part to the risk and illiquidity inherent in that investment class. When assessing the risk-return relationship for different types of real estate investment (e.g., core real estate, real estate securities, mezzanine investment, opportunistic investment, and brownfield redevelopment) brownfield redevelopment clearly falls within the upper range of the risk-return spectrum. One of the lessons of this data is that, if we wish to foster a more active private sector participation in the cleanup of our nation's polluted land, we have two levers to adjust. Either one can either lower the risk associated with tackling a brownfield project or increase the potential project return. Absent one or both of these factors, developers across America will follow the easy road: remaining content to make sizeable returns converting the next farmstead to suburban sprawl on that proverbial 'edge of town.' However, as my presence before this distinguished body suggests, there are successful and experienced brownfield equity investors with long track records that have developed the necessary risk management skills to navigate this otherwise risky business environment. Buyer track records and reputation are especially important when sellers seek a transfer of environmental risk and liability.

For small transactions, the number of brownfield equity investors is still limited, though it has been growing in recent years as regulatory changes have encouraged more redevelopment. For large transactions, the universe of brownfield equity players is even smaller, though legislation enacted last October served to promote the formation of larger pools of capital dedicated to the investment in brownfields (I will discuss this legislation in Part IV of my testimony). The main incentives for a seller to transact with equity players with large pools of institutional capital are easy to understand: the wherewithal and credibility, the ability to close without financing contingencies and the experience and track record of the equity investors experienced with large and complex transactions. When unforeseen liabilities arise, or costs spiral out of control (as they so commonly do), our experience is that such unbudgeted events have never been less than 200%. The ability to stand behind a project and write a check to cover such unforeseen events is something that can be reassuring to sellers, communities and

investors alike. On the other hand, institutional investors have fairly rigid return expectations, structural requirements and limited investment horizons, which are often hard to satisfy in many transactions.

The cost of investment equity for brownfields is higher than for greenfields due to the additional time, cost and legal risks assumed for brownfield redevelopment. To achieve a targeted internal rate of return (IRR), the longer the time horizon between the date of purchase and the date of sale of the property, the larger the required spread between the purchase and exit price. Historically, depending on the prevailing interest rate environment, prudent brownfield investors underwrite transactions to yield an IRR between 5-10% greater than a typical greenfield investor. By targeting a higher IRR, brownfield investors attempt to compensate for the historically lower rates of return actually realized on brownfield investments.

Debt
Traditional redevelopment projects rely heavily on the use of debt to enhance investor IRRs and sometimes make seemingly economically unviable projects doable by virtue of time compression effect that use of debt affords an equity investor. Brownfield projects do not have this same luxury. The use of debt in the capital structure reduces the "blended" cost of capital and increases both project risk and the return on equity. Typically, development teams use debt when the project can generate a certain amount of cash flow (e.g., from existing building lease) to service interest payments. Debt cost varies from project to project and is highly dependent on the overall capital market at the time when debt financing is needed.

Conventional lenders are generally unwilling to provide debt during the times when it is needed most: i.e., before cleanup, rezoning and leasing or sale activity has been achieved. On occasion, certain lending groups have warmed to conditional participation in brownfield projects if there is sufficient equity in the project (the amount of equity depends on the overall risk profile of the project), the critical path to environmental closure is known and, perhaps, accomplished or nearly accomplished, and the equity partners/developers have the reputation, track record and risk management capabilities necessary to limit the downside risk. Without these conditions, lenders have been reluctant to lend funds on contaminated sites due to the potential liability, the relatively limited income stream in the short and medium term and the lack of marketability. In the construction lending context, where principal repayment takes months or a few years, lenders chiefly worry about the borrower's collateral relative to contingencies in the construction budget for unknown site costs and whether the project has or can readily obtain takeout financing. Permanent lenders primarily worry about the borrower's defaulting, which may require them to assume ownership of a stigmatized asset with questionable value.

Government Funding & Incentives
As I will discuss more extensively in Parts III and IV of this testimony, government incentives can provide the necessary additional funding to encourage additional brownfield redevelopment. Local governments usually shy away from direct grants; instead, tending to favor property tax incentives and Tax Increment Financing (TIF), especially for infrastructure costs like roads and utilities. Under TIF, the increased tax revenues generated by the redevelopment are used to pay off part of the redevelopment expenses. Federal and State

Brownfield funds are sometimes available. More recently, some states are considering, or have passed, laws that authorize the establishment of a capital pool, drawn from future tax revenues, to serve as reimbursement of certain qualified remediation expenditures. Other programs offer low or zero interest debt financing for brownfield redevelopment. Occasionally, it may be worth exploring a special State or Federal appropriation to kick-start a remediation project. If the Federal Government is a responsible party for onsite contamination, then such appropriations are more likely.

It is unquestionably paradigmatic that the largest and, arguably, most important, brownfield projects in our nation require true public-private partnerships, allowing all stakeholders to leverage each another's resources to produce a winning result for all parties. I can think of several projects that would never have generated attention were it not for the willingness of public and private entities to brainstorm together creative ways to accomplish a shared goal.

E. Impact of Proposed/Recent Court Ruling and Legislation

Recent U.S. Supreme Court ruling as well as federal and state legislations have helped private and institutional investors become more comfortable with investing capital to redevelop environmentally impaired properties. In 1998, the U.S. Supreme Court in United States v. Bestfoods (528 U.S. 810; 120 S. Ct. 42) clarified the Superfund liability for corporate parents. This case held a corporate parent responsible under CERCLA when (i) the corporate veil is pierced under traditional corporate law doctrines, or (ii) the corporate parent or shareholder directs the workings of, manages or conducts the affairs of a polluting facility. In 2002, the Small Business Liability Relief and Brownfields Revitalization Act increased funding and tax incentives to promote the cleanup and reuse of brownfield and helped clarify and limit the Superfund liability of owners and purchasers under certain conditions.

Furthermore, existing federal legislation has sought to utilize the nation's tax structure to provide incentives for the privately funded cleanup of brownfields. For example, Section 198 of the IRS Code, initially passed in 1997, and subsequently amended, provides a framework to encourage the cleanup of qualified contaminated sites by allowing an eligible taxpayer to immediately expense, rather than amortize, the costs of remediation. Other contaminated site tax legislative proposals have recently passed or are on the horizon. I will discuss two of these in Section III and IV of my testimony today.

F. Brownfield Investment Key Criteria

Location and real estate market are critically important. Ideal brownfield sites are in growth corridors within tier 1 or 2 urban markets with good access from a main highway, complemented by good visibility and strong demographics. In addition to the environmental impairment, a primary brownfields site has all the attributes of a good real estate development site. Due to prior use, many brownfield sites have industrial zoning, and the potential to rezone them for mixed-use residential/retail often increases their development value. To analyze whether a real estate transaction has potential for a private brownfield investment group, the starting point is a thorough understanding of the site's real estate fundamentals. Two of some of the most important analytical elements are the site's underlying market value (its value without the contamination and stigma) and time required/complexity involved to

achieve a revitalized site (and hence, a financial exit). Typical brownfield site screening criteria are as follows:

Capital Commitment
The "ideal" size of capital commitment by private brownfield investors depends on the size of their available capital pool. Brownfield investors would prefer to commit amounts of capital in each transaction that reduces overall overhead. Well-capitalized brownfield investors often seek transactions that allow them to employ $10 million or more, realizing that smaller projects can often require as much overhead as larger projects. The site size (number of acres or square feet) is irrelevant if the location does not dictate sufficient value. Multiple sites with a common owner sold as a portfolio can provide the desired critical mass of dollar value.

Market
Brownfield developers prefer properties in primary urban markets because they represent potentially higher real estate values and because market demands in those areas are more likely to enable prompt (or less risky) redeployment of the asset after cleanup.

Location
Location, despite the cliché into which it has evolved, is still a dominant factor in analyzing a site. Access to highways and infrastructure, visibility and future-use possibilities all combine to increase the value of sites.

Environmental Cost, Schedule and Path to Closure
By studying existing environmental documents including soil-boring results and groundwater well test results and by conducting other standard types of environmental and land use due diligence with the help of experienced and well-qualified technical and legal consultants, the brownfield investor usually can make a well-educated guess as to the extent of the required environmental clean-up. An added challenge is mapping out a remedial closure path that dovetails with future redevelopment plans for the site. In some cases, a seller does not know (and does not wish to know) whether, and to what extent, contamination is present on its property. Former manufacturing sites, for example, are still contracted for sale without the benefit of accompanying Phase I and Phase II assessment reports.

Case Study – The ICI/O'Brien Industrial Park

Background
In 1999, ICI Glidden Paints, a division of the ICI Group ("ICI"), acquired the O'Brien Corporation ("O'Brien"). As part of the acquisition, ICI decided to divest a portfolio of environmentally impaired real estate assets owned by ICI and O'Brien. The real estate portfolio consisted of six sites ranging in size from 8 to 25 acres. The portfolio of sites was financed wholly with equity from Cherokee, because debt financing was not available due to the presence of site contamination. Cherokee also provided the seller, ICI, with full indemnification supported by a comprehensive environmental risk management program. Cherokee's ability to invest capital within a short timetable (one month of due diligence) and to provide full indemnification were key to the transaction's success.

Site Description and Environmental Conditions
Site 1: The property consisted of two industrial buildings on roughly eight acres owned and occupied by ICI in South San Francisco, California. The first building was a three-story concrete, paint manufacturing building containing 76,000 square feet of net rentable area. The second building was a one-story, concrete tilt-up, warehouse building containing 94,700 square feet of net rentable area. The land north of the ICI warehouse building had lead contamination.

Site 2: This property was comprised of 18.6 acres zoned light industrial within the City of South San Francisco. The Fuller-O'Brien Company had used the site as a paint manufacturing and distribution facility from the early 1900's and had terminated most site operations in the late 1980's. The site was the largest piece of land in the immediate South San Francisco area, enjoyed bay frontage and was ten minutes from the San Francisco airport.

Federal EPA Administrative Order of Consent issued in final form on April 18, 1991 applied to the site. At the time of the transaction, O'Brien operated the site remediation as two units, Operational Unit (OU) 1, which dealt with the soil issues, and OU 2 which addressed groundwater issues. One area on the east side of the property bordering the Bay was contaminated with lead and some SVOCs required additional remediation. O'Brien had not fully defined groundwater contamination. The remediation cost was estimated to be several million dollars.

Site 3: This property in Georgia consisted of a 70,000 square foot building located on 8 acres. O'Brien had used the property in the paint manufacturing process, but had vacated the property in the late 1980's. The building was in average condition with several hundred thousand dollars needed for deferred facility maintenance to prepare it for tenancy. BTEX and lead were the main site environmental concerns. Barium and zinc also existed above permissible regulatory levels. Remediation costs were estimated to be several million dollars.

Site 4 and 5: These properties included an approximately 28,000 square foot building on 43,000 square feet of land and five residential lots located within Anchorage, Alaska. The building was a single-story, concrete block retail/warehouse constructed in 1956. These properties were well-located within the city of Anchorage, Alaska, and the building was in good condition. Minor environmental corrective actions were underway.

Site 6: This 25 acre site was on Highway 288, south of Houston. The site was undeveloped and near Houston Hobby Airport. Contamination was insignificant.

Market Analysis
At the time of the transaction, the South San Francisco market had one of the lowest average vacancy rates and the most expensive average lease rates in the area. With little available developable ground, developers had delivered little space to meet the needs of the expanding local economy. Analysts assumed the area would remain a landlord's market for several years. In Houston, the demand for industrial space was high and industrial vacancy rates were falling. Shortages of such space had stimulated new construction, boding well for this parcel. Most new construction was in Houston's northwest and southwest quadrants. Analysts

expected warehouse space absorption to remain strong and lease rates and sales prices to increase.

Investment Risks
Market Value for Improved Land in South San Francisco: Because value in this investment was in the remediation and disposition of the ICI and O'Brien properties, a decrease in undeveloped land values during the project holding period would adversely impact investment return.

Near-by Waste Transfer Facility: During due diligence, Cherokee discovered that an adjacent, 11-acre, vacant waterfront parcel was designated for an enclosed waste transfer facility. Cherokee had concern that a transfer facility might detrimentally impact the O'Brien site's potential use as an office/R&D site.

Environmental Liability: Investment in ICI and O'Brien's real estate assets included significant environmental liability risk from known and unknown contamination. However, through extensive environmental due diligence, Cherokee gained increasing confidence that the liability was manageable. Cherokee also employed sophisticated risk transfer mechanisms to mitigate potential liability, including insurance policies to address any overage in the estimated total cost of remediation as well as pollution legal liability from unknown contamination discovered during the ensuing five years. On the basis of its financial and environmental due diligence and risk transfer program, Cherokee proceeded with the transaction during the summer of 1999. The parties structured the transaction as a single acquisition with separate purchase agreements among Cherokee, ICI and O'Brian. The sellers received an indemnification backed by a risk management structure.

Epilogue
Cherokee completed all environmental remediation by June 2003. Groundwater monitoring is on going at two sites. All six sites received No-Further Action letters from the California Department of Toxic Substances Control and the Regional Water Control Board. For one site, the environmental remediation cost exceeded the estimated cost, but the risk management program operated as planned and covered the additional expenses. During 2002 and 2003, Cherokee has sold all of the sites. Site 1 and 2 will become biotechnology research and development facilities. Site 3 was sold to a developer with plans for a retail and office complex. Sites 4 and 6 were sold to an end-user for warehouse and distribution, as well as possible retail components.

III. Brownfield Solutions

Given what we know about the causes of the brownfield problem, the market forces that both inhibit and encourage remediation and redevelopment, existing government programs to encourage redevelopment, and criteria that the markets use to select particular sites for investment, how do we solve the overall problem? How do we move beyond our current situation where some sites are being remediated and redeveloped while literally hundreds of thousands of others continue to languish?

A friend once told me that for every complex, difficult problem, there's usually a simple solution – and it's usually wrong.

I think that's true for the brownfield issue generally. If there were one simple solution, we probably would have found it and enacted it long ago.

On the one hand, the problem seems clear-cut: the costs associated with remediating and redeveloping a brownfield site must be outweighed, when adjusted for risk, by the potential economic reward from that transaction.

Viewed on that level, the solution becomes one of reducing costs and risks or increasing potential income.

On the other hand, the problem is much more complex. Some brownfield sites are already economically "above water" – that is to say that without additional incentives, those sites will likely be revitalized at some point in time. Fear of unknowns or other risks may still drive most prospective developers of those sites away, but an objective analysis would suggest that the project is economically viable. Other sites are marginally "under water." That is to say that with some coordinated efforts, focus, creativity and a modest economic push, the sites would likely be redeveloped within a reasonable period of time. And then there are sites in less attractive real estate markets and/or those with more substantial contamination. Those sites may be substantially under water and, without significant help, may never be cleaned up.

Viewed on this level, the solution becomes more multifaceted, requiring a mix of federal, state and local incentives to thoroughly attack the problem. Policymakers need to increasingly understand that the problem of brownfields is nuanced and solutions must be nuanced and targeted, as well. Some would prefer to focus attention on the graphical intersection of the most polluted sites and those with the lowest intrinsic real estate value, as these are the ones that most need the help of the public sector for reclamation to occur. Others would prefer to target sites that fall within the graphical intersection of the sites with both the most economic development potential and those that are most easily, quickly and cheaply revitalized. Perhaps the answer is a combination of those two views. Regardless of one's view, we would be doing our country a disservice by not understanding the market factors driving cleanups and crafting policies and programs that target those sites that are determined to be in most urgent need of redevelopment.

If we, as a country, really want to attack the brownfield issue on a nationwide basis, it is clear that we must create policies that will truly move the meter well beyond assessment assistance and expensing provisions—though such programs have been important and will continue to help move sites back into productive use. But, by now, it should be clear to everyone involved that these programs are simply insufficient to drive most of the 500,000 to 1 million brownfield sites into revitalization.

The United States Environmental Protection Agency, in an analysis conducted with George Washington University, concluded that the remediation "costs for all of the brownfields located within the United States have been estimated to exceed $650 billion," and that,

consequently, "*it is imperative that private capital be attracted to the redevelopment of brownfields.*"

I believe that it is on this front that the federal government can have the biggest impact.

The challenge to the federal government should not be to create a new program that helps better characterize brownfield sites or that tries to create a larger role for federal agencies.

The federal government's challenge should be to look for bold, innovative ways to reduce barriers and create incentives to attract significant volumes of private capital to help remediate and redevelop our nation's brownfields.

In this testimony, I would like to comment on two critical pieces of brownfield tax legislation introduced in the U.S. House of Representatives during the 108th Congress – H.R. 4480, sponsored by the Chairman of this Subcommittee and H.R. 3527, sponsored by Congresswoman Nancy Johnson and co-sponsored by Chairman Turner.

H.R. 4480 creates a transferable tax credit that can be used to offset remediation expenditures and utility construction costs associated with revitalization of brownfield sites. Cherokee Investment Partners strongly supports this type of approach and believes that it would go a long way toward attracting new capital into the brownfield markets.

H.R. 3527 was enacted into law last year as section 702 of H.R. 4520, the American Jobs Creation Act (P.L. 108-357). This new provision is designed to attract significant volumes of tax-exempt capital into the brownfield markets by waiving unrelated business income taxes for qualified brownfield remediation projects.

Cherokee Investment Partners believes that these two legislative efforts have the potential to dramatically increase the rate at which brownfields are remediated and revitalized all across America.

A. H.R. 4480 (Chairman Turner)

H.R. 4480 seeks to create a transferable tax credit for up to 50 percent of remediation expenditures and utility reconstruction costs at qualified brownfield sites. Critically, this tax credit would be available prior to the actual expenditure of the remediation costs, thus allowing a pioneering developer to attract more capital with the equity created by the credit.

This program, which would be administered by state agencies, would dramatically improve the economics of brownfield transactions and could attract significant volumes of new capital into remediation and redevelopment of brownfield sites.

The existence of such a credit would allow companies like ours to consider additional investments in property where the remediation costs sufficiently outweigh the potential economic benefits to be derived from the final revitalized site. A significant transferable tax credit could unleash substantial private sector capital for brownfields remediation, attract

environmental practitioners and developers to the field, and generate efficiencies within the brownfield submarket that would be beneficial to communities and industry practitioners.

Finally, a tax credit program could prove a tremendous benefit to the Treasury and to thousands of communities across the country. Brownfields revitalization generates jobs and new business development, stimulates additional community investment, and provides an alternative to sprawling development, which has proven to be so costly for so many communities. In addition to the significant savings in transportation, housing and infrastructure costs from smart growth and infill development resulting from brownfield remediation, cities and states will benefit from substantial job creation and added tax revenues.

For example, we estimate that our redevelopment of a 49.8 acre site in downtown Denver, Colorado into a mixed-use property with direct access to Denver's light rail system will generate more than 4,000 jobs and an annual tax benefit of more than $1 billion. Nationally, the US Conference of Mayors has estimated that brownfields redevelopment in 150 cities will yield over 575,000 jobs and between $790 million and $1.9 billion in additional tax revenues while preserving approximately 225 acres of undeveloped greenfields. A transferable brownfield tax credit will serve to further unlock the large quantity of environmentally impaired sites around the nation.

Case Study – Millworks[1]
An Analysis of Potential Impact of Proposed Brownfield Credit Legislation

Overview
Most developers require sufficiently high returns for construction projects and even higher returns for development of clean, raw land. Brownfield sites are significantly more complex and risky, due to uncertainty regarding liability, final clean-up costs and the shortage of debt and equity financing. Consequently, investment in brownfield development by the private sector must create returns in excess of those of clean land development. Congressman Turner's legislation provides a tax credit large and flexible enough to promote investment in and development of brownfield sites, particularly those located in blighted areas, by expediting the development process and providing access to additional financing.

About the Site
Millworks is the proposed redevelopment of Milacron's 70-acre tooling factory located in Cincinnati, OH. Milacron operated the site from 1911 until 1999 when Unova purchased the factory and phased-out operations. The brownfield site contains Milacron's former power plant for the factory, which likely contains harmful chemical compounds, and other environmental contamination. Situated in a historically industrial complex and most recently employing 1,000 people, the Millworks site has been largely inactive for over a year, thus contributing to local unemployment and blight. In 2003, Trademark Property Co. and Vision Land Development LLC, who own an option to purchase the land from Unova, proposed a

[1] Source: The Cincinnati Enquirer 5/7/04, Cincinnati Business Courier 5/10/04, The Cincinnati Post 1/10/04, www.cincinnatimillworks.com, http://www.detnews.com/2002/business/0210/02/business-602616.htm, internal analysis.

two-phased $225 million redevelopment. However, as of May 7, 2004 they had not yet exercised their option due to the continued requisite environmental cleanup of the site. In addition, despite financial backing from Transwestern Investment Co. and Aslan Realty Partners II, the developers (if the land purchase option is exercised and the first phase developed by late 2005) will require local subsidies of up to $32 million. Moreover, no leases with potential tenants have been signed.

Investor Perspective
In 2003, Cherokee explored an investment in the redevelopment of the Millworks site, but declined to invest in the site's revitalization due to the uncertainties, liability, and costs associated with environmental remediation and redevelopment. Specifically, initial pro forma estimates yielded an internal rate of return in the single digits making an investment in the redevelopment project economically unattractive given its risks (see Appendix). However, an estimate of the impact of the proposed Brownfield Credit on the financial returns shows an internal rate of return in the teens, which depending upon interest rates, is within range of widely acceptable returns for investors and developers for this type of asset. Consequently, this example suggests that had a tax credit, such as the one proposed by Representative Turner, been available in 1999, the redevelopment of a large, contaminated, and unproductive site could have attracted more private investment sooner.

Millworks - Summary of Financial Model

Analysis of Impact of Proposed Tax Credit
($ in millions)

	Without Credit	With Credit
Land Acquisition Cost	$34.0	$34.0
Qualifying Expenses		
Abatement of hazardous substances	na	7.4
Demolition related to abatement	na	6.9
Removal/disposal of property related to abatement	na	-
Reconstruction of utilities related to abatement	na	-
Total qualifying expenses	$0.0	$14.3
Nonqualifying Expenses		
Site assessment	0.8	0.8
Asbestos abatement	1.8	1.8
Insurance and due diligence	1.3	1.3
Non qualifying cost of abatement	14.3	0.0
Other nonqualifying expenses	4.6	4.6
Total nonqualifying expense	$22.8	$8.5
Total Costs	**$56.8**	**$56.8**
Tax Credit Under Proposed Legislation (50% on qualifying expenses)	**$0.0**	**$7.2**
Project IRR	**5.7%**	**19.6%**
	Infeasible	Feasible

[1] included under costs of abatement and demolition

As illustrated by this case study, the tax credits contained in Chairman Turner's legislation would have a dramatic impact in helping to revitalize brownfield sites all across America. Coupled with existing tax provisions such as Section 198 and the newly enacted unrelated business income tax waivers, Representative Turner's legislation will help transform the tax code into a powerful and dynamic driver that will use the strength of private markets to solve one of America's most critical environmental and economic challenges.

B. H.R. 3527 (Johnson - CT)

Overview
On October 22, 2004, the President signed into law H.R. 4520, the American Jobs Creation Act (P.L. 108-357). Section 702 of this law, effective January 1, 2005, amends the federal tax code to encourage investment in contaminated lands. This section, "The Brownfield Revitalization Act of 2005" allows tax-exempt entities to invest their capital in the remediation and redevelopment of certain contaminated lands without the risk of incurring unrelated business income tax penalties on the gains realized on those investments.

Background
In recent years, it has become apparent that certain provisions in the federal tax code were having the unintended consequence of discouraging significant private investment in the remediation and redevelopment of our nation's polluted sites. The Unrelated Business Income Tax ("UBIT") provisions of the tax code have reduced the economic attractiveness of such investments for managers of what has been estimated at over 60% of the institutional capital in this country: tax-exempt investors such as pension funds, endowments and foundations. Worse, this "chilled" investment interest came at a time when the cleanup and redevelopment industry's track-record of managing environmental risk had finally shown itself potentially worthy to be entrusted with the capital of the largest institutional investors in the nation. Tax-exempt investors could invest their capital in the stock market and certain real estate transactions that do not clean the environment without fear of incurring a UBIT penalty. Ironically, however, these same investors would be subject to UBIT if they were to invest in the cleanup and redevelopment of contaminated property.

Because it has been estimated that UBIT-sensitive entities hold over $6-trillion dollars in financial assets and routinely deploy more equity capital in real estate development projects than any other category of investor, the unintended consequence of UBIT had been to drive our nation's biggest and most active real estate investors away from projects focused on the remediation and redevelopment of polluted properties.

The Solution to the UBIT Problem
In 2002, Senators Grassley and Baucus, Chair and Ranking Member of the U.S. Senate Finance Committee, entered a colloquy in the Congressional Record expressing their concern that UBIT was blocking the investment of private capital in revitalization of America's polluted sites. Senators Grassley and Baucus expressed their interest in exploring narrowly crafted legislation to waive UBIT on investments in the cleanup and revitalization of qualified contaminated sites.

Late in 2003, two identical, bipartisan bills, H.R. 3527 (lead sponsors: Johnson (CT) – Becerra) and S.1936 (lead sponsors: Baucus -Inhofe) were introduced in the House and Senate to address this issue.

These bills allowed eligible tax-exempt entities to invest in the cleanup and redevelopment of qualified contaminated properties without the fear of incurring unrelated business income tax at the time the property is sold by the entity. The bills applied only to: investments in highly contaminated property (at least $550,000 must be spent on remediation); and only to investments that result in the cleanup of the contaminated property (the taxpayer must obtain a certification from EPA or State Environmental agency that the property is clean).

This cost-efficient approach to encouraging investment in contaminated properties was endorsed by, among others, the U.S. Chamber of Commerce, the National Taxpayers Union, the U.S. Conference of Mayors, and Environmental Defense.

On July 15, 2004, Senators Lautenberg and Dole offered the text of the Baucus-Inhofe bill as a floor amendment to S.1637, the Senate version of the JOBS Act. The amendment was included as part of the managers' amendment to the JOBS Act and ultimately included in the House-Senate Conference report on the JOBS Act filed on October 7, 2004.

Signed into law on October 22, 2004, the Brownfield Revitalization Act of 2005 has the potential to dramatically increase the speed at which our country's contaminated properties are remediated and brought back into productive use, thereby creating jobs, increase tax revenues, and protecting human health and the environment.

The Brownfield Revitalization Act of 2005 will allow eligible tax-exempt entities to invest in the cleanup and redevelopment of qualified contaminated properties without incurring unrelated business income tax at the time the property is sold by the entity.

Legislative Summary
The legislation, which was drafted with heavy involvement and oversight by the Joint House and Senate Committee on Taxation, accomplishes this goal by concentrating on three basic tasks:

1) Focus investment on moderately and heavily polluted properties,
2) Require taxpayers to work with affected states and the public to ensure adequate cleanup, and
3) Limit application to prevent abuse of the program.

The legislation is designed to require the taxpayer to work closely with affected states and the public to ensure that sites are appropriately remediated.

1) Focus on moderately and heavily polluted properties.

The goal of the Brownfield Revitalization Act of 2005 is to encourage the deployment of private capital to assist with remediation of sites containing nontrivial amounts of contamination, as measured by cleanup cost.

Section 198 of the tax code contains a structure under which designated state environmental agencies certify contaminated property that is eligible for special rules concerning deductions of remediation costs. The Brownfield Revitalization Act of 2005 uses this existing structure to identify and certify contaminated sites that are eligible for inclusion within this bill. Prior to requesting certification from a state agency, the taxpayer is required to provide the agency with site characterizations, assessments and other documentation illustrating the scope and character of the pollution problem at the target site.

The legislation maintains its focus on moderately and heavily contaminated properties by requiring taxpayers to expend on remediation of each site the greater of $550,000 or 12% of the fair market value of the site, assessed as though the site were not contaminated. These remediation thresholds have intentionally been set well above the average remediation cost estimated by the Environmental Protection Agency for brownfield sites nationwide. By establishing these admittedly high remediation thresholds, the legislation excludes incidentally or trivially contaminated property and focuses new capital investment on those sites most in need of additional assistance.

2) Require taxpayers to work with affected states and the public to ensure adequate cleanup.

In addition to requiring high-levels of remediation expenditures on each site, the legislation contains numerous other safeguards designed to ensure that remediation of each site is performed to state specifications and with full public involvement.

Like the front-end certification that is required to classify properties as truly contaminated, the legislation requires the taxpayer to obtain a tail-end certification from the state agency indicating that this contamination has been adequately remediated. Prior to applying for this certification, the taxpayer must provide the state agency with sufficient information/documentation to allow the state agency to make this determination. In particular, the taxpayer must certify and provide documentation that:

a. there are no longer hazardous substances, pollutants or contaminants on the property that are complicating the redevelopment or reuse of the site,
b. environmental remediation is complete or substantially complete in conformance with all applicable federal, state and local environmental laws and regulations,
c. the property is suitable for more economically productive or environmentally beneficial uses than at the time of acquisition and,
d. if additional activities are required to complete remediation, sufficient financial assurances and institutional controls are in place to complete the remediation in as short a time as possible,

Further, the taxpayer must provide public notice of its remediation plans and activities and must provide the public with an opportunity for public comment on those plans and activities.

The provisions in this legislation are designed to create substantive thresholds that the tax-exempt entity must meet in order to qualify for the exemption from UBIT. This legislation does not alter the existing complex web of federal, state or local environmental laws, regulations or standards.

3) Limit application to prevent abuse of the program.

The legislation has been drafted to contain numerous safeguards to prevent abuse of this program. First, the taxpayer cannot be the party that has caused the pollution and cannot be otherwise related to the polluter. Second, all transactions (purchase of the property, sale of the property, expenditure of remediation funds, etc.) must be arms-length transactions with parties unrelated to the taxpayer. Third, the taxpayer is not allowed to use federal funds (e.g. grants, loans, etc.) to count toward the required remediation thresholds. Finally, the legislation contains special provisions addressing the use of these provisions by partnerships and other pass-through entities.

Conclusion

The US Chamber of Commerce estimates that at the current rate of remediation, it will take 10,000 years to clean up our nation's brownfields. Clearly we can, and must, do better.

I sit before you today as testament to the fact that with will, perseverance, patience, integrity and intelligent financial and risk management, the private sector can play a substantial role in cleaning up the pollution of this country's industrial past.

I also sit before you today as a testament to the fact that this problem is too big for any one organization, government or market sector to take on single-handedly.

It is only through public-private partnerships involving the private sector, non-profits, and federal, state and local governments that we will have a chance at solving this problem in our lifetimes.

Congress has enacted a number of critical provisions to encourage revitalization of America's brownfield sites. These include Section 198 enacted in 1997, the 2002 brownfield law, and the new unrelated business income tax waivers enacted in 2004.

Cherokee Investment Partners strongly endorses Chairman Turner's efforts to add to this lineage. The transferable tax credit provisions in Chairman Turner's legislation will dramatically accelerate the rate and geographic scope of brownfield revitalization in America.

Nearly every member of Congress has the misfortune of brownfields within their own districts. I know many of you sitting before me do, as well. Working together, government and the private sector can address the environmental contamination at these sites and can build healthy communities, with healthy tax and job bases and strong economies.

Working together, government and the private sector can solve America's brownfield problem.

Cherokee Investment Partners looks forward to working with Chairman Turner and the members of this Subcommittee to continue to explore new ways to accelerate brownfield cleanups. Please do not hesitate to look to us as a resource both for these legislative endeavors and for assistance with specific sites that you are aware of that are in need of targeted assistance.

Mr. Chairman, members of the Subcommittee, it has been an honor and a privilege to testify here today. I am happy to answer any questions that you may have.

Contact Information:

For more information regarding this testimony, or if there is a site or community area in need of our help or attention, please use the following contact information:

Jonathan Philips
Cherokee Investment Partners
702 Oberlin Road, Suite 150
Raleigh, NC 27605
(919) 743-2500
jphilips@cherokeefund.com
www.cherokeefund.com

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BIOGRAPHY OF JONATHAN PHILIPS

Jonathan Philips is a Senior Director of Cherokee Investment Partners, LLC. He specializes in investment, strategic and structuring activities. Through his work identifying, analyzing and executing transactions, Mr. Philips has forged partnerships with communities, organizations, agencies and officials. In addition to his deal and strategic work, Mr. Philips helped architect the federal 2005 Brownfield Revitalization Act that was enacted by Congress and signed by the President in October 2004. Mr. Philips also created the *US Conference of Mayors—Cherokee Investment Partners Community Revitalization Initiative*, a first-of-its-kind national public-private partnership to fast-track the cleanup and revitalization of property in cities and towns across America. Prior to joining Cherokee, he served as a senior executive officer and General Counsel of a closely held company headquartered in New York City where he identified, structured and closed private equity investment and strategic relationships. Previously, Mr. Philips practiced as a corporate attorney with Davis Polk & Wardwell in the Merger and Acquisitions and Capital Markets groups, where he represented private equity, banking and corporate clients in over 25 public and private transactions, comprising over a billion dollars of closing value. Before Davis Polk, Mr. Philips founded and led a Manhattan-based consulting company and, previously, worked as a strategic management consultant. Mr. Philips has served as an advisor to corporate and nonprofit entities and is actively involved with several nonprofits throughout the country. He received his law degree from the Yale Law School, where he was an Olin Fellow in Law and Economics, and his Bachelors degree from the University of Virginia, where he was an Echols Scholar with double Highest Distinction. He and his wife, Eva, are parents of three children.

ACKNOWLEDGEMENTS

This testimony would not have been possible without the help and inspiration of so many wonderful people with whom I work at Cherokee Investment Partners. These people are committed to the ideals for which we stand and I am proud and honored to team with them in the pursuit of community transformation. Collectively, we feel that we are stewards of the environment, our investors' capital and the communities we serve. Our mission and culture of integrity permeate the people who comprise our dedicated staff. It is with the passion of mission, courtesy, patience, encouragement of creative and out-of-the-box solutions, and steadfast execution that Cherokee has achieved its longevity and growth. For these reasons and more, I am grateful to each of my colleagues. I would like to especially thank Tom Darden and John Mazzarino, our co-founders, who have steered our organization since inception with extraordinary vision and infectious humility. My testimony is comprised of excerpts, both large and small, of several previously drafted documents, including one notable conference presentation, authored by two of my colleagues, Dr. Laurent Luccioni and Roliff Purrington, that has materially contributed to the acceleration of the preparation of this testimony. Brian Kuehl, Brittany Burkett, Brooke Kelley, Rich Ochab and Jim McQueeney all deserve special mention and a huge thank you. These are individuals who paused other undoubtedly important and pressing matters in order to contribute to the creation of this testimony. Finally, I would like to thank and congratulate Chairman Turner, his wonderful personal staff headed by Stacy Barton, the Subcommitte staff, particularly John Cuaderes and Shannon Weinberg, and the other members and staffs of this Subcommittee for shining a national spotlight on solutions that can help unlock tremendous social value for all strata of our nation, so that the ripple of brownfield revitalization can be felt for many generations to come. We are truly grateful for the opportunity to serve them and the entire United States Congress.

Testimony of Jonathan Philips
Before the House of Government Reform Subcommittee on Federalism and the Census
April 5, 2005

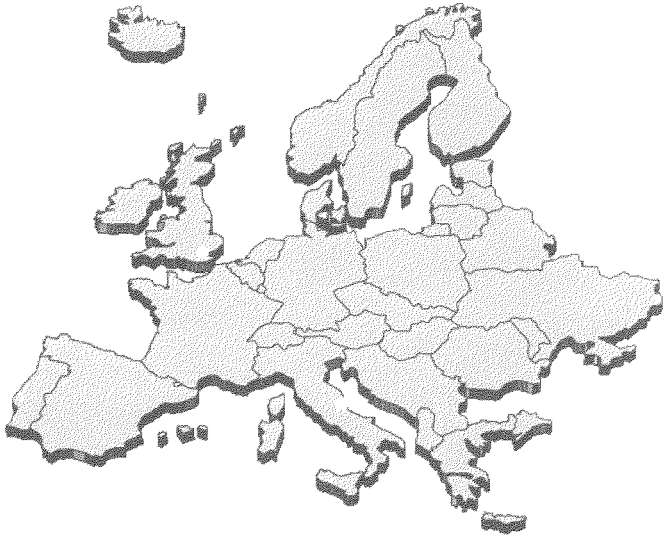
EXHIBIT I

Overview of Cherokee

- Largest firm globally with expertise in the acquisition, remediation and reuse of abandoned, underutilized or contaminated property
- $620 million private equity fund that specializes in brownfield acquisitions
- Over $1 billion of assets under management
- Over 330 properties acquired since 1990
- Proven track record of environmental indemnification

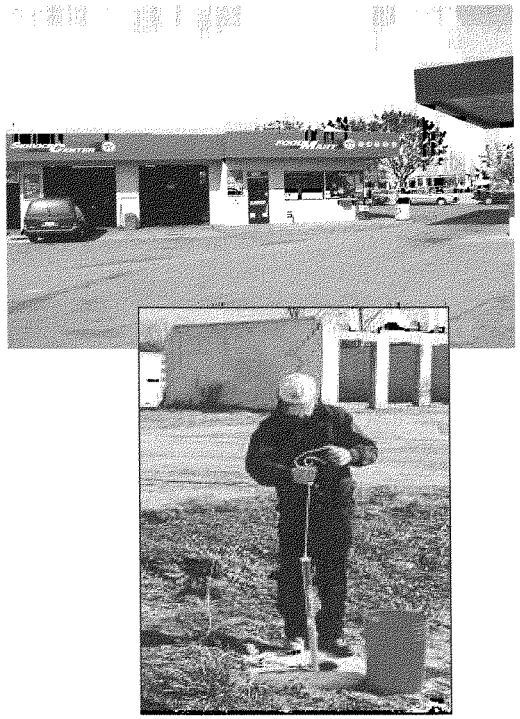
Our mission is to acquire environmentally impaired assets, restore these assets to productive use and protect sellers from the associated risks and liabilities. We embrace a win-win attitude, enabling sellers and communities to share in the benefits of our labors.

Sites Purchased Since 1990

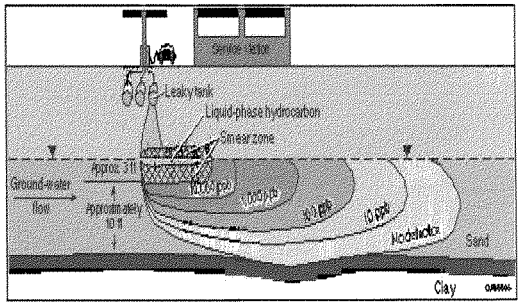


Equilon Portfolio

Various U.S. Sites



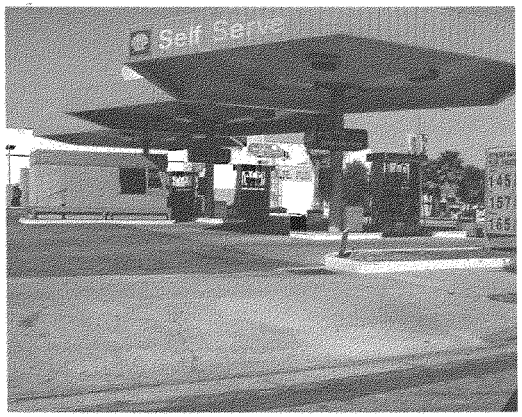
- **10 active and 58 inactive gas station pad sites in eleven states collectively 42.8 acres with 77,790 square feet of improvements (typically service bays with small retail buildings)**
- **Purchased from Equilon Enterprises, a former Shell/Texaco joint venture**

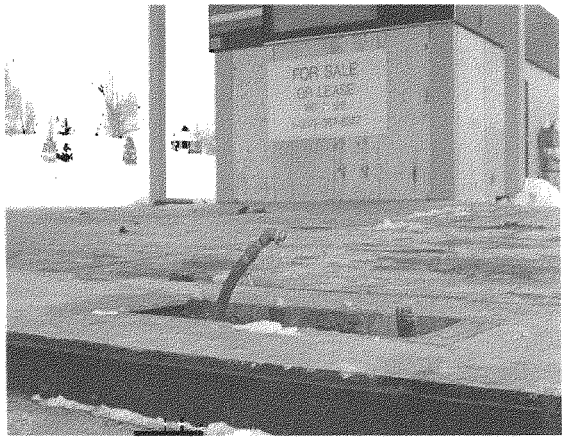


Equilon Portfolio

Various U.S. Sites

- **Hydrocarbon and BTEX contamination related to historical gasoline, diesel and waste oil from underground storage tanks**
- **Located in dense areas, on high traffic intersections with good visibility and access**
- **To date, 60 of 68 sites sold**



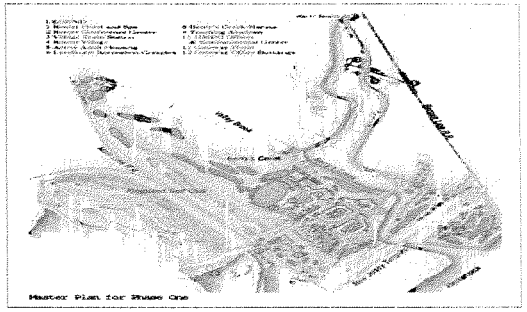


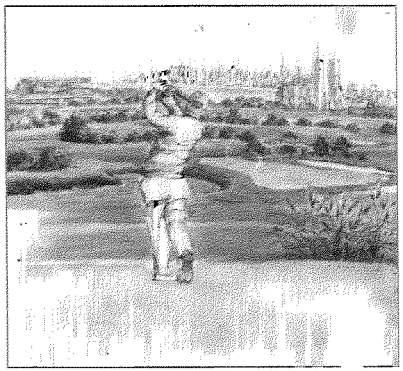
Cherokee Meadowlands

Meadowlands, NJ - Phase I

Meadowlands golf resort community includes:

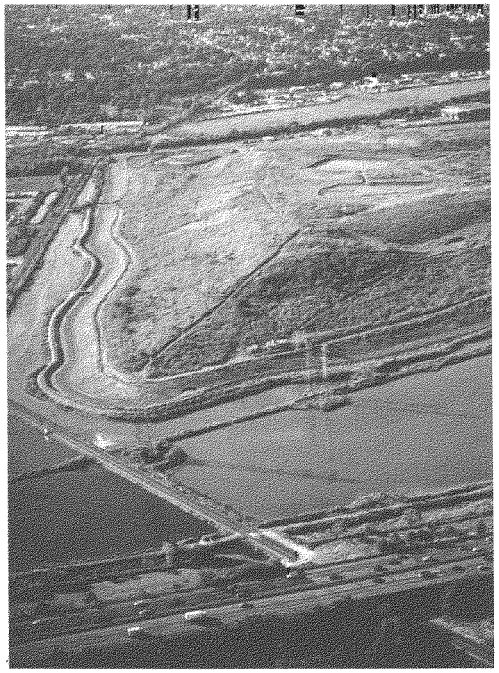
- **758 acres**
- **Hotel/conference center, residential, retail and recreational components**
- **Marina and railroad station**
- **$160 million remediation**

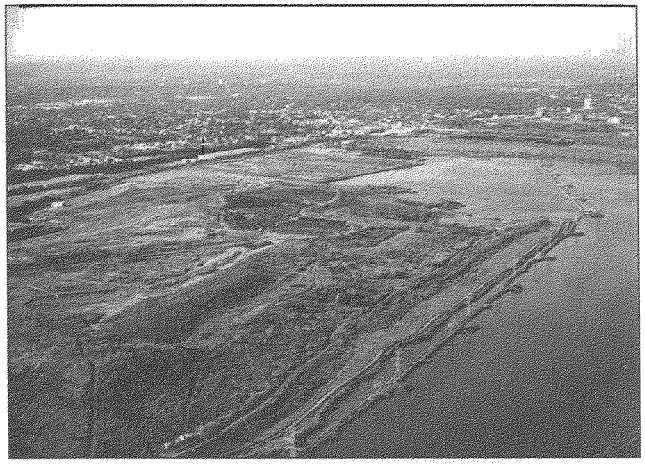




Cherokee Meadowlands

North Arlington, NJ - Phase II



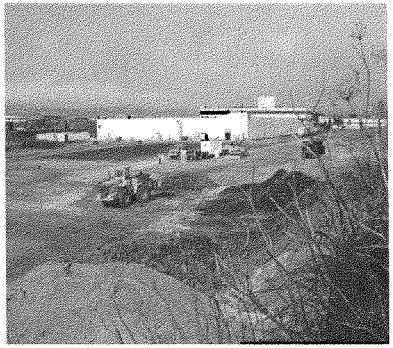


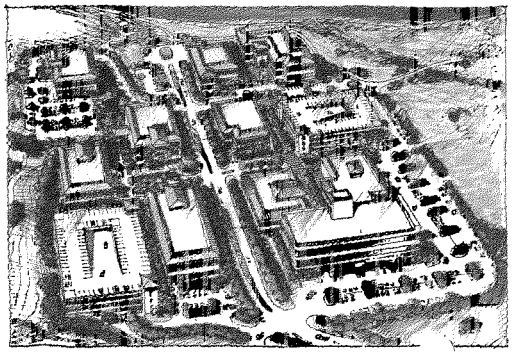
- 550 acres in North Arlington, NJ
- Five miles from midtown Manhattan
- $70 million remediation cost
- Site plan includes 1,375 homes and an eighteen-hole golf courses

ICI/O'Brien

San Francisco, CA

- Cherokee acquired the portfolio in 1999, including two sites in San Francisco
- Excessive levels of arsenic and lead as well as diesel and oil in the non-potable aquifer
- Cherokee indemnified ICI for the liability associated with sites and remediated all sites before final sale
- Sites 1 and 2 will become biotechnology research and development facilities
- Site 3 was sold to a developer with plans for a retail and office complex
- Sites 4 and 6 were sold to an end-user for warehouse and distribution, as well as possible retail components





Mr. TURNER. Thank you, Mr. Philips.
Mr. Steidl.

STATEMENT OF DOUGLAS L. STEIDL

Mr. STEIDL. Mr. Chairman, good morning. I'm Doug Steidl, president of the American Institute of Architects. On behalf of our 75,000 members nationwide, I wish to congratulate you and this subcommittee's insights into our most strategic issue for our communities, and to thank you for the opportunity to appear today as you begin your deliberation on the state of designated brownfield sites across America.

Architects have some unique talents. Our most formidable skill is our ability to capture abstract goals and turn them into tangible form. We also integrate multi-disciplinary teams to work efficiently for a common goal, and as a result of that, it usually is that we are the first professional brought on board to address a project site. Bricks and mortar are the physical result of our work, but architects do more than create buildings; we believe we create communities. Through our understanding of people and how they interact with their physical environment, we add vision and value to our citizens' lives. In addition, architects are leaders in their communities and help drive the design construction sector of our national economy. That sector accounts for 8 percent of our gross domestic product. For these reasons, I believe, we are uniquely qualified to testify on the issue of brownfields. The American Institute of Architects is intensely concerned about making the Nation's communities healthy, safe, livable, and sustainable places. As a result, we have long had an interest in finding imaginative and constructive uses for urban land that now lies fallow because of the residual contamination that is part of its industrial heritage.

In 2001, the AIA took a strong position favoring H.R. 2869, Congressman Paul Gillmor's brownfields bill, which became the Small Business Liability Relief and Brownfields Revitalization Act. That statute established the U.S. Environmental Protection Agency's current brownfields program and has led the way in changing the Nation's perception about abandoned real estate. The AIA is heartened by the progress that has been made under that program but believes that more rapid progress is both possible and necessary.

I come here today commending you for holding this hearing. I also come with a message: The time is now for Congress to enact new brownfields legislation. The AIA has a position. Our interest in brownfields redevelopment springs from our commitment to fostering vital, healthy communities. The AIA is concerned that abandoned industrial sites in every State threaten local citizens with exposure to toxins. They serve as dead zones in the midst of neighborhoods drastically in need of revitalization, and they isolate and divide people and cities. The contamination is thus responsible for stymieing redevelopment and limiting economic investment and job creation. It often leads to sprawl and uncontrolled growth as land is sought elsewhere in greenfields.

The U.S. EPA's use of Federal dollars to remedy such sites has had notable results. Unfortunately, as the Government Accountability Office's brownfields report of last December points out, there are far more brownfield sites requiring remediation than the U.S.

EPA program could ever hope to address in our lifetimes. As a result, Federal legislation is needed to expedite site cleanup and foster economic redevelopment of these properties. At a time when our Nation is searching for solutions to sprawl and pollution, these sites are the new frontier, bursting with community potential and economic hope. I might add that, in general, and in my personal practice, the responsible party has not been the party to mitigate brownfields; it's either the local government and institutional clients, such as a university, and, in some very rare circumstances with minor mitigation requirements, the new landowner. These properties are often in central urban locations where costly utilities are already in place. This represents a real opportunity for sustainable development that helps the economy and the environment.

In addition, brownfield cleanup offers an opportunity to improve human health. Though I am not a health expert, I believe that, without incentives for cleanup and redevelopment, contaminated properties will continue to pose public health hazards long into the future. According to the AIA, brownfield reuse will increase the local tax base, create jobs, revitalize neighborhoods, link vital city services and extend environmental protection for all citizens.

The GAO reports, between fiscal years 1995 and 2004, the U.S. EPA awarded over 1,200 brownfield grants, totaling about $400 million. Unfortunately, an estimated 450,000 to as many as 1 millionsites remain. More must be done to promote revitalization, and the most creative way to address this need is to harness the power of private capital.

There are success stories. Many American cities are undergoing a renaissance. Young professionals and empty nesters have begun to migrate to cities and continue to make them the location of first choice. Brownfield redevelopment capitalizes on this trend and helps the urban revitalization momentum going. I have included three detailed success stories, Glen Cove, NY; Charlotte, NC; and Pittsburgh, PA, for this subcommittee's consideration. These are but three of many. They appear in the copy of my remarks that was submitted for the record.

In conclusion, the American Institute of Architects believes that Federal tax credits for remediation expenditures at brownfield sites will provide the needed incentive to induce private parties to undertake the cleanup and rebuilding of these sites. The AIA supported H.R. 4480, the chairman's legislative effort in the 108th Congress, which would have allowed taxpayers a credit against income tax for expenditures to remediate contaminated sites. The AIA is pleased to see that he has improved and reintroduced that legislation again in the 109th Congress. We look forward to working with you and your growing contingent of co-sponsors. We believe that it is necessary that these incentives be enacted during this session of Congress. Thank you.

[The prepared statement of Mr. Steidl follows:]

THE AMERICAN INSTITUTE OF ARCHITECTS

STATEMENT OF DOUGLAS L STEIDL, PRESIDENT

"LANDS OF LOST OPPORTUNITY: WHAT CAN BE DONE TO SPUR REDEVELOPMENT AT AMERICA'S BROWNFIELD SITES?"

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

APRIL 5, 2005

2154 RAYBURN HOUSE OFFICE BUILDING
10:00 AM

The American Institute of Architects
1735 New York Avenue, NW
Washington, DC 20006
(202) 626-7361
govaffs@aia.org
www.aia.org

Introduction

Mr. Chairman, Members of the Subcommittee – Good Morning:

I am Doug Steidl, President of the American Institute of Architects. Mr. Chairman, Ranking Member Clay, on behalf of our 75,000 members nationwide, I wish to congratulate you on this new Subcommittee and thank you for the opportunity to appear today as the Subcommittee begins its deliberation on the state of designated brownfields sites across America.

Architects' Unique Perspective

Architects do more than design buildings. We create communities. Through our understanding of the interaction of people and their physical surroundings over time, we add vision and value to the entire development process. Bricks and mortar are what we see. But our most formidable skills lie in our ability to get people to express their abstract goals and visions and then capture them in buildable form. Since informed decisions made early will save considerable time and money, bringing an architect on board from the outset of a development project will pay for itself many times over in both first-cost development and construction, and life-cycle operation. The architect's unique abilities—to see a multidisciplinary picture and unite

various factions of the community—encourage innovative solutions to brownfields redevelopment.

Architects are leaders in their communities and help drive the design sector of our national economy. This sector accounts for 8 percent of our Gross Domestic Product (GDP). Over 280,000 Americans work in architecture firms, and many more depend on jobs and income derived from the design profession and the built environment.

Architects are also intensely concerned about making the Nation's communities livable, sustainable places. As a result, we have long had an interest in finding imaginative and constructive uses for urban land that now lies fallow because of the residual contamination that is part of its industrial heritage.

In 2001, the AIA took a strong position favoring H.R. 2869, Congressman Paul Gillmor's brownfields bill, which became the Small Business Liability Relief and Brownfields Revitalization Act. That statute established the U.S. Environmental Protection Agency's (U.S. EPA) current brownfields program and has led the way in changing the Nation's perceptions about

abandoned real estate. The AIA is heartened by the progress that has been made under that program, but believes that more rapid progress is both possible and necessary.

I come here today commending you for holding this hearing. I also come with a message: the time has come for Congress to enact new brownfields legislation.

Position

As I stated, the AIA's interest in brownfields redevelopment springs from our interest in fostering vital, healthy communities. The AIA is concerned that abandoned industrial sites in every state are contaminated with the residue of past industrial activity, threaten local citizens with exposure to these toxins, and serve as dead zones in the midst of neighborhoods drastically in need of revitalization. Such dead zones scare away developers who would otherwise embrace redevelopment. The contamination is thus responsible for stymieing redevelopment, and limiting economic investment and job creation. It ultimately leads to sprawl and uncontrolled growth. The U.S. EPA's use of Federal dollars to remedy such sites has had noticeable results. Unfortunately, as the Government Accountability Office's (GAO)

brownfields report of last December points out, there are far more brownfield sites requiring remediation than the U.S. EPA program could ever hope to address in our lifetimes. As a result, Federal legislation is needed to expedite site cleanup and foster economic development of former industrial properties.

Turning these areas into mixed community uses, such as parks, shopping areas, learning centers, and affordable housing, is a great opportunity. Brownfields reuse will increase the local tax base, create jobs, revitalize neighborhoods, and extend environmental protection for all citizens.

At a time when our Nation is searching for solutions to sprawl, these sites are the new market frontier bursting with community development, and new economic opportunities. When combined with intelligent planning, community involvement, entrepreneurial spirit, and a clear vision, brownfields sites can be transformed from environmentally contaminated landscapes to thriving urban centers.

Brownfields are untapped resources that hold a wealth of opportunity. Often in central urban locations with costly infrastructure already in place,

brownfields represent a real opportunity for sustainable development that both helps the economy and the environment.

According to the GAO, between fiscal years 1995 and 2004, the U.S. EPA awarded over 1,200 brownfield grants totaling about $400 million. Unfortunately, an estimated 450,000 to 1 million brownfields sit abandoned or underused across the country. More must be done to promote brownfields redevelopment, and the most creative way to address this need is to harness the power of private capital markets.

Success Stories

Many American cities are undergoing a renaissance. Young professionals and empty nesters have begun a migration to cities and continue to make them the location of first choice. Brownfield redevelopment capitalizes on this trend and helps keep the urban revitalization momentum going. I have included three detailed success stories – Glenn Cove, New York; Charlotte, North Carolina; and Pittsburgh, Pennsylvania – for the Subcommittee's consideration. These appear in the copy of my remarks that were submitted for the record.

Glen Cove, New York

The city of Glen Cove, N.Y., has been an industrial center since the mid-1600s. This Long Island city's coastline consists of 214 acres of mostly contaminated, abandoned, and underused sites within its 1.1-mile waterfront district. Glen Cove had two Federal Superfund sites. Sixty-eight percent of this land is made up of brownfields with histories of heavy industrial and manufacturing use. The entire waterfront area has been cited as an "urban blight area" by the U.S. Department of Housing and Urban Development (HUD). Moreover, 13 percent of households within a mile of the site have annual incomes under $15,000.[i]

Jambhekar Strauss Architects, under the lead of Mark E. Strauss, AIA and Uwe Brandes, developed the Glen Cove Creek Revitalization Plan seeking to make Glen Cove "a place people are attracted to, rather than a place people avoid."[ii] This master plan broke the 214 acres on both sides of the creek into seven zones. The zones were targeted for a marina, a high-speed ferry terminal that provides service to Manhattan and Connecticut, a conference center, a hotel, a maritime museum, a waterfront gateway visitors center, an amphitheater, offices, shops, and restaurants.

With funding from EPA's Brownfields Showcase Community Program, Federal and state agencies as well as private-sector investment, Glen Cove leaders expect to rejuvenate their city by generating $200 million in annual sales and creating 1,700 full time jobs.[iii]

Charlotte, North Carolina

Charlotte is home to more than 800 brownfield sites.[iv] Charlotte's South End, a former industrial center, had been plagued with environmental contamination and crime. The area consisted of several abandoned warehouses and railroad tracks with varying levels of soil and groundwater contamination. But a "hot" real estate market in Charlotte encouraged developers to consider revitalizing these neglected sites.

Kevin E. Kelley, AIA, and Terry Shook, AIA, of Shook Design Group, created a redevelopment vision for the South End in their master plan. Their goal was to turn this brownfield area from a "sore spot to a hot spot."[v] The centerpiece of the plan became the Charlotte Trolley that runs for about two

miles from South End, through the Convention Center, and to the other side of downtown. South End is now known for its characteristic red brick buildings built to the street, pedestrian walkways, and recreational areas. This community is home to both residential, commercial, entertainment, and small-industrial facilities. The motto of the master plan is to create "a hip urban area in which to live, work, and play."[vi] Architects led the effort to craft the vision and transform it into a vibrant urban reality.

Pittsburgh, Pennsylvania

Brownfields redevelopment is no stranger to Pittsburgh. In fact, Pittsburgh has been named the number one urban brownfields market in America.[vii] The Washington's Landing site (formally known as Herr's Island in Pittsburgh) consists of 42 acres of contaminated land that had been used for industrial operations for the last two centuries. It has been home to heat processing plants, a saw and steel mill, a fertilizing company, a soap company, a garbage plant, a railroad yard, and a slaughterhouse. Over the years, the island became notorious for its stench, called "Herrs' stink" by the local population.[viii] In fact, when excavation for building began, several

cattle carcasses were unearthed. The environmental contamination ranged from known groundwater contamination to the later discovery of polychlorinated biphenyls (PCBs), a known carcinogen. But Pittsburgh developers saw this prime waterfront location as an excellent redevelopment opportunity.

Robert Pfaffmann, AIA, of Pfaffmann and Associates, created the master plan for Washington's Landing. The vision for the island included facilities for a rowing association, both upscale housing and moderately priced residential units, office space, and a riverfront trail system. The 1-½-mile trail that today circles the island provides a great view of boats traveling along the Allegheny River and serves as a magnet to draw people to the area. The island has been transformed. Many compare the view of the Pittsburgh skyline to that of the Emerald City in the Wizard of Oz. Others claim the view is reminiscent of an Eastern European City with a view of the historic cathedrals that tourists flock to see.

Today on Washington's Landing, homes that initially sold for $50,000 are now selling for $650,000. The island has produced over 600 jobs and generates over $700,000 in annual tax revenue for the City of Pittsburgh.

Conclusion

The AIA believes that Federal tax credits for the remediation expenditures at brownfields sites would provide the needed incentive to induce private parties to undertake the clean-up and rebuilding of these sites. The AIA supported H.R. 4480 - the Chairman's legislative effort in the 108th Congress to allow taxpayers a credit against income tax for expenditures to remediate contaminated sites. The AIA is happy to see that he has improved and reintroduced it again in the 109th. We look forward to working with him and his growing contingent of cosponsors to get these incentives enacted sooner rather than later.

Thank you

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[i] *Brownfields Showcase Community – Glen Cove, New York, Quick Reference Fact Sheet, November, 1998*, U.S. Environmental Protection Agency (EPA) web-site document, www.epa.gov/swerosps/bf/html-doc/sc_glenc.htm (accessed June 29, 2000).
[ii] The Glen Cove Creek Revitalization Plan: Area Analysis, Master Plan, and Site Design Studies, December, 1996, Pg. 4.
[iii] *Brownfields Showcase Community – Glen Cove, New York, Quick Reference Fact Sheet, November, 1998*, U.S. Environmental Protection Agency (EPA) web-site document, www.epa.gov/swerosps/bf/html-doc/sc_glenc.htm (accessed June 29, 2000).
[iv] GreenOnline.com Center for Environmental Commerce web-site document , Charlotte Page, www.greenonline.com/Brownfields/Charlotte.asp, (accessed June 29, 2000).
[v] Kevin Kelley, "Branding a District" Downtown, Charlotte's Urban Culture, Spring 2000, Vol I, Pg 42-47.
[vi] Kevin Kelley, "Branding a District" Downtown, Charlotte's Urban Culture, Spring 2000, Vol I, Pg 42-47.
[vii] GreenOnline.com Center for Environmental Commerce web-site document, Brownfields Overview, www.greenonline.com/Brownfields/overview.asp (accessed June 29, 2000). The following selection criteria were used: number of brownfields identified/listed; positive local history of brownfields redevelopment; favorable regulatory/financial/political environment including financing/tax incentive, cleanup reassurances, risk-based corrective action, and special mayoral-level brownfields groups/initiatives; economic potential; and local real estate market conditions.
[viii] Department of City Planning, Herr's Island Study. Pittsburgh, Pennsylvania, January, 1969.

Mr. TURNER. Gentlemen, I thank you for your testimony and your insight that you bring, but I also thank you for your commitment to this issue. Because one of the things that is very clear in your testimony is a love of your communities and a love of the projects you have undertaken that has brought you to participate in brownfield redevelopment, because, as you all testified, certainly greenfield redevelopment is easier and has a greater potential many times for return. Your dedicating yourself to brownfield redevelopment, we all know, is both a philanthropic as well as a business dedication.

And I wanted to talk a minute about the issue of the cost. We focus many times on the liability issue, but in undertaking brownfield redevelopment, each of you have to have a level of expertise that you would not find in the average developer or someone who might want to undertake a redevelopment project that includes the bureaucratic processes of environmental remediation.

Mr. Philips, you talked about the private/public partnerships many times that have to be brought together. Many times there are grant programs or other types of financial assistance to address some of the costs which themselves are complex. The bureaucratic processes in getting approvals for the undertaking of the environmental remediation, I believe, is a very complex process. Could you talk about the cost, your experiences there and addressing the bureaucratic processes and working with EPA, State EPAs, some of the things that you see that are working there, some of the things that you see that need to be improved? Start with Mr. Maurin.

Mr. MAURIN. Yes. Again, my personal experience is limited to probably a half a dozen sites, and these sites have been in the States of Louisiana and Mississippi. And where I've heard, quite honestly, that there have been in the past issues with regard to the EPA we have found in both States that, working with their local DER, DEQ, both States have enacted brownfields legislation. And for the most part, quite honestly, we have been able to be very successful in working with the States directly themselves and have had little or no interference or problems or issues with the EPA.

Now, my experience is really the last 4 or 5 years, and then only in two limited States. But I must say that the States do get it. In the case of Mississippi, we had a very large project in which they did not have a brownfield law which, as a result of our project, we induced the State to actually pass a brownfield law about 4 or 5 years ago. So I've had very good experiences working with the States and have had little or no problems on the EPA side.

Mr. TURNER. Mr. Philips, again, also addressing the issue of the increased costs in going through those processes as you put your projects together.

Mr. PHILIPS. Sure. First, though, on the EPA question. We found that, when we come into a situation, we're generally proposing to do something that no one has ever proposed to do before. We walk into a regulator's office and say we want to aggressively clean up this site, and we want to do it now and we want to use our own money to do it. And it's a very different reception than I imagine others might receive. And we applaud that the EPA recently maybe not so recently has taken a fairly targeted and focused approach toward reuse of sites under EPA jurisdiction. And that has also been

a great program and great to work with them. But the time that it takes to engage in the regulatory process and to engage in the permitting onsite is a critical, critical issue, and I'm glad you asked about it, Congressman. Time is the biggest enemy of a viable return on investment for us, and we are putting money, our investors' capital, in from day one for cleanup. We want to make sure that permitting process, that regulatory process can occur quickly, and that usually happens through the education of the States and local jurisdictions. And I will just give you a very short case study on this.

A few years ago, we bought a portfolio of sites. Some were in San Francisco, another was in Georgia. And we engaged in the redevelopment process concurrently for both sites. By the time we had cleaned up and redeveloped and permitted the properties in California, the Georgia property had not yet begun to be permitted because we were still engaging in the regulatory process. That is not necessarily a criticism of Georgia, but it may be just an issue of resource allocation or a familiarity with these sorts of projects, but it goes to show you how much of a difference States can make, at least on this level, in the regulatory and permitting process that you have raised.

Mr. TURNER. Mr. Steidl.

Mr. STEIDL. Approvals are generally not a problem if you have all your data together. The problem we see with many of our clients, especially in the private sector, is that they want to move yesterday; and in moving yesterday, they don't have a timeframe in order to allow for investigation and approvals. So the risk factor goes up, but it's primarily a time issue. They make the decision before they get to totally evaluating the dollars. The decision's made. We can't do it time wise, let's go to the greenfield.

Where we have had projects that moved forward in a brownfield, they've primarily either been institutional, such as a university. We have a project with a university right now that they have a 5-year plan, so they started investigating the initial cost, the contamination assessment and everything 5 years ago. When they got to the project, they had to increase their budget by $800,000 on an $11 million project, and that is a 2-acre site, and it's an urban site that is not—it's basically minor contamination. So, 7 percent for minor contamination.

The other projects where we've had private developers work have been a negotiated process with the municipal government. And what usually happens is the municipal government will guarantee so many dollars in order to abate whatever the materials are, and then the developer does anything that's new construction. That is a real burden on the local citizen, the government, the taxpayer. The public/private cooperation has to work in a different way, and I think your bill, if the statutes are set up on how it can be done and it can be simplified in the approval process, will be a real plus.

Mr. TURNER. Having been a mayor, and then, obviously, any mayor is active in economic development in their community. When I look at abandoned properties, I see them differently sometimes than many others. If I drive by an abandoned house, I don't think, someone wants to live there anymore—no one wants to live there

anymore. I think, gee, the title must be pretty messed up. I wonder why no one can acquire that house and redevelop and refurbish it.

Similarly with brownfields. When I drive by an abandoned factory site, I think of the environmental contamination, the impediments, the risk, the risk of capital, the liability risks. But there are many people who think differently. When they drive by an abandoned factory, they think that the usefulness of that property has passed, that the location is no longer desirable, that economic development as a wave has moved on; and then, if the property is located in the central city, that it is no longer desirable for someone to redevelop and bring back to productive use.

You all obviously are active in environmental remediation projects for redevelopment. What is your perspective? Do you believe that if we did provide an incentive, that these properties would become attractive? That it's not just that there is more than just the environmental contamination that's keeping them from being redeveloped? Or if we address the issue of subsidizing that remediation, will we in fact see an engine for economic development in these areas?

Mr. Maurin.

Mr. MAURIN. Well, Mr. Philips made a comment in his testimony kind of categorizing brownfield sites into three categories. And those that clearly need no incentive whatsoever, the benefit and the cost are there. And of course, most of those have been done already. Most of those have happened. The second category needs slight incentives to make them profitable. And then there is that third category that we all have to ultimately focus on if we are going to solve the problems of the cities, and those are the ones that are just really under water, is the term that was used. And I think that, as a private developer, when we look at a redevelopment project, we will essentially put it into one of those three categories.

I think that the best thing that we see in the cities, however, particularly with the old factories or whatever, is the adaptive reuse of those properties; i.e., a developer stepping forward and saying that, in the eyes of the people of Akron, for example, that has been a factory for 80 years or 90 years. But a developer walks in, looks at the city, looks at the revitalization, and he sees a residential development. He sees a condominium project. He sees something entirely different. And I think that's where the marriage between the private development community together with the local government, I think that's really where the ideas are coming from. There's kind of an entrepreneurism in this whole area right now in the area of adaptive reuse. And I think that in some of the tougher ones that we have to work with, that's where we have to be thinking.

Mr. TURNER. Mr. Philips.

Mr. PHILIPS. Yes. I believe in certain cases is more than merely environmental contamination cost. To use a case study, in our experience, we are leading the largest investment in the history of the city of Camden, NJ, a city where, like many other cities, there are a number of brownfield sites. But there are also other problems. There are economic development problems, there is blight, and there is perceived stigma, and there are questions of assem-

blage: How does one assemble enough property in one mass to really make a critical difference to the residents of a community, and to encourage a true revitalization of that area? Those are the things that we struggle with, and we look to public-private partnership, again, to try to help solve.

Mr. TURNER. Mr. Steidl.

Mr. STEIDL. I think the three tiers of classification is a good example, and that the middle tier will be addressed by this issue. Geographic issues and economic issues of a region also play in. Mayor Plusquellic mentioned Youngstown, OH. I think Youngstown, OH, will have a tough time just because of the overall demand placed by the city. But there is a tendency by singles, young professionals and retirees to enjoy the city again, to go back to a pedestrian lifestyle and to look at the cultural levels that happen in a city. And I can tell you that two examples, one in Akron, OH, the city is essentially out of downtown land. It's framed in by some highways hills, and ravines; I know that Mayor Plusquellic has proposed tearing out a highway in order to provide land in the downtown area. And I think there are many cities where these types of sites are available adjacent to a downtown area that would really stimulate the economy.

I just visited Richmond, VA, and their adaptive reuse of warehouse buildings and storage facilities into housing is at an end or very near to an end because they are out of the buildings. They've run out of adaptive reuse positions. And I think that these types of incentives will create in that second tier a great deal of enthusiasm. People want to be in cities and see that as a viable alternative to their lifestyle now.

Mr. TURNER. In the brownfields tax credit bill which I proposed, 4480, there is a provision that allows those who were responsible for the contamination to step forward and participate in the cost of environmental remediation in exchange for a release for the remainder of the cost for the redevelopment plan that the tax credit is applied to. There has been some concern about providing that release. I view it as an incentive to get them to the table. They have a significant amount of knowledge that's important for putting together the assessment and the redevelopment plan. Also, their contribution to the overall costs are important.

Mr. Steidl, I believe you had said that many times, that the past contaminator is not involved in the redevelopment. I would like, if you would, from your experience, to speak about that issue; whether or not, when you have undertaken the redevelopment, if the past contaminator has been to the table, has worked with you, if there is any incentives that you have seen that brings them to the table. If you believe that the incentive of a release that's provided in the bill would be helpful in bringing them to the table and bringing their capital to the table. Could you speak to that issue, Mr. Maurin?

Mr. MAURIN. You know, it's a very good question, and I'm just personally thinking here, and I'm not sure. I will say that the original superfund law passed well over 20 years ago, quite frankly, I think in hindsight we look—all of us look at it and say on one hand it got the attention. It really got our attention. It got everyone's attention, particularly if you were in the chain of title on a contami-

nated property. But in many ways, it tried to deal with the issue of contaminated properties with one cut, one way, only one way. And I think that what has happened in subsequent legislation that's occurred is being able to look at some of the things that didn't work in superfund and basically getting some properties really out of that category and moving it into another category, the brownfield category. And I think that's been a tremendous help. I think that the incentives certainly very well may help some of these mothballed sites, as the mayor talked about, that the owners have simply mothballed them, and they continue to still be a blight on the cities of America. So I think the incentives will help. I think that we have to look back upon the last 20-plus years of that rule, literally, that the polluter pay rule and what success we've had, what limited success we've had on it and possibly look at incentives to get those folks that were involved with that to the table. So I think this is a move in the right direction.

Mr. TURNER. Mr. Philips.

Mr. PHILIPS. We regularly deal with the question of how to, so to speak, pry open the vault, how to see what's behind the doors of a potential seller. How do we persuade a seller to allow testing when that seller has never assessed their property, and has never done so out of fear, frankly, of being put on notice legally that they would be liable then for cleanup and potentially other penalties?

In an ideal world, there ought to be a way to conduct an assessment even if it's by a third party that is not so punitive to the owner of the property who may have had no responsibility other than through corporate secession, to encourage them to allow a third party to assess their property and not trigger some of the penalties and enforcement.

I do on the other hand understand the concern that some have that they don't want to completely eviscerate the disincentive for future bad actors to perform—to allow contamination to occur on their sites. And so that seems to be the tension.

But I think we need to be progressive thinking and realize that right now, if we want to clean up these sites, we have to look for new solutions. And, Mr. Chairman, you have offered a very intriguing solution that we have been working with you to support and help, and we applaud your efforts in figuring out ways to bring PRPs to the table. And one of the comments that I didn't include in my oral testimony, but I think it's really important for the private sector to be more involved on the Federal level. The EPA has a multi-agency brownfields program. There ought to be private sector individuals or entities involved in that, talking about the latest brownfield evolving changes in climate, and I think that will help get the PRPs more comfortable. And with some innovative solutions like the ones you have proposed, we will be able to see some of these sites unlocked for future reuse or redevelopment.

Mr. TURNER. Mr. Steidl.

Mr. STEIDL. This is obviously opinion and not based on fact. I have one fact, and that fact is that I've never been involved in a project that looked at a brownfield where the principally responsible parties were involved. And so I think that your proposal is a creative way of testing the waters at this point as to whether that motivation will bring principally responsible parties back into the

formula, perhaps with information on the site. But that limitation of liability or elimination of risk is a creative solution that I believe should be explored.

Mr. TURNER. One of the things that I'm repeatedly asked when we talk about the number of brownfields that are out there, if there is a rule of thumb on evaluating the costs for addressing remediation of these sites. Each of you have experience in this. I wonder if you have a rule of thumb that you look to on an acreage basis or a project basis that can give people an understanding of a way to work toward an estimate of the cost of addressing these sites. Mr. Maurin.

Mr. MAURIN. We really don't. And what we find as we evaluate these sites—and much of our development of these types of sites have been tenant driven. We have had a developer, an interested user that wants to be there, and it just happens to be a contaminated site. And what we as developers do, quite honestly, is evaluate the site, look at the cost that it's going to take to get that site to kind of back to zero to get the contamination cleaned up, and we look at our user, we look at—and then we also meet with the local authority, with the mayor and look at them. And, quite honestly, we have been involved with some sites that were, in terms of the value of the site were very expensive, but the city was willing to participate in some form or fashion, in some sort of grant or some sort of inducement. So, on our own, we would have passed that site. In other cases, between we as the developer and our user, we were able to fully pick up the cost of the remediation of that site and move on and redevelop it. So, quite honestly, there is no real simple formula, I don't believe, for coming up with what makes one feasible and another not feasible.

Mr. TURNER. Mr. Philips.

Mr. PHILIPS. Mr. Chairman, I would echo that sentiment. We've looked into quantitative indicators, and they all seem fairly imperfect. The per-acre measure doesn't reconcile the rural situation with the urban situation or the coastal situation. Likewise, on a per-square-foot basis, it's difficult to quantify with a rule of thumb what the likely cost of the cleanup might be. It's so particular to each site and also to the eventual reuse. Is the site going to be reused? Is it going to be an industrial facility again that needs to be cleaned up to industrial standards? Or is it going to be a residential facility? That's going to greatly impact what kind of costs we are going to assess or calculate as part of the formula for making these decisions. So each site is so unique.

If I had to guess—this is my own personal opinion, a number like 25 percent to 40 percent may not be too far off the mark. I would be willing, if the committee were interested, to research our own internal data and report back the findings.

Mr. TURNER. That would be excellent. I would appreciate it.

Mr. PHILIPS. Sure.

Mr. TURNER. Mr. Steidl.

Mr. STEIDL. I have no figures. I don't think there's a formula. We've never been able to find one. I mean, there are things for some individual specifics, but each site's so unique. I concur with what's been said previously.

Mr. TURNER. One final question. When I served as mayor I had the opportunity to travel with the American Institute of Architects as part of the U.S. Conference of Mayors to look at brownfield sites in Europe and what they were doing there to address redevelopment and cleanup. So I'm certainly aware from that, that what other countries are doing in addressing this both in the manner of cleanup and in liability provisions may be different. I wondered if any of you would like to speak on the issue of what other countries may be doing so we can also look at that as opportunities for us. Mr. Steidl.

Mr. STEIDL. Well, that tour was made I believe in 2001, and there were some fantastic examples of what can be done that came out of it. I personally do not have that data, but we can go back as the American Institute of Architects and collect some of those examples and get them to you. Europe has a different approach or atmosphere that allows some of those items to be executed as opposed to what might happen in this country. But we will be glad to get back to you.

Mr. TURNER. Excellent.

Mr. PHILIPS. We at Cherokee buy sites in other countries and have some desire to expand our program, started in the United States, to other areas of the globe. And our experience has been mostly in Europe, and it has been telling. In some European countries, the national government has actually approached us to assist with a particular site. That was something that surprised us, frankly, and it was a breath of fresh air. Clearly, brownfields have plagued Europe as much or more than our own Nation, and the leadership there has recognized the problem. But beyond a recognition, European countries have taken some bold steps. Our London office has marveled at the legislation that was passed in the United Kingdom which required that 60 percent of all new development—I believe this is correct, 60 percent of all new development shall occur on brownfield sites. Imagine what that mandate has done to educate the traditional development community about brownfields.

In places like the African continent, cleanup may encounter more hurdles. Our pro bono projects in Ethiopia, for example, encountered a legal system that did not adequately support the core concept of property rights, individual property rights. And this makes it difficult to make bets on how and when the future value of what you're going to clean up and revitalize is going to pay back, or to know the costs associated with the cleanup and the other project costs.

So I think it varies drastically depending where on the globe one looks. But we certainly have plenty to learn from other countries, although I believe our country may be leading the pack in many respects.

Mr. TURNER. Excellent point. We want to ask if anyone has anything else that they would like to add?

Mr. MAURIN. No. Not really. Again, I've had no personal experience on that. I would only say that, just with my travels with the International Council of Shopping Centers this year, where we do have some 90 countries that are members, in my travels around the world, I have seen a wide variety on the issues of redevelopment and cleanup, particularly inner city. When you go from China

all the way to Western Europe, and even within Western Europe you see a wide variety of rules and levels of concern on this. So I agree with the comment made here that I think the United States is probably kind of the leader of the pack right now with regard to, on a Federal level, being able to be as involved and as focused on the cleanup of our environmentally contaminated sites. I've found no other examples that might be ones that we could follow.

Mr. TURNER. Excellent. Well, are there any other additional comments that any of you would like to put on the record before we conclude?

Great. Well, before we adjourn, I would like to thank each of you for participating, and both of our panels, for their participation today. I appreciate your willingness to share your knowledge and experiences and thoughts with us today. I also would like to thank the participation of the staff and the members of the committee for their support for us undertaking this hearing.

Clearly, there are numerous remediation redevelopment success stories, thanks to EPA's brownfields program, and I commend the EPA for their accomplishments thus far. With 450,000 to 1 million brownsites lying idle across the Nation, we must recognize that there remains room for improvement. I am encouraged by the EPA's continued work in the area of performance measures development. We cannot effectively evolve this program unless we know where improvements may be necessary.

One area we already know needs improvement is aid in the post-assessment and cleanup phase. That's why we need to address the redevelopment phase. According to landowners and developers, the two largest impediments to redevelopment of brownfields are liability and the high cost of redevelopment. The Brownfields Act addressed liability by providing some relief from the superfund law. We must now address the remaining gap. Without reasonable financial incentives, we may be looking at a problem that is too big to address through regulation and grant programs alone. As we have heard from both GAO and the representative stakeholders on our panel, a tax credit for remediation costs would go a long way toward encouraging more aggressive redevelopment of these blighted properties. Redevelopment brings new economic vitality to areas that badly need jobs, new or improved infrastructure, and the economic activity of new shopping services and living choices. As I mentioned at the beginning of today's hearing, in the very near future, I will be introducing the legislation directly on point here. At the same time, the subcommittee will continue its oversight of the many issues discussed before us today. In early May, I plan on holding hearings in Ohio on the subject of brownfields. I believe the perspective from stakeholders outside the Beltway will give the subcommittee a better understanding of this issue. It is my hope that we will hear from those who are faced with the issue on a day-to-day basis at those hearings.

Again, I want to express my thanks for the witnesses for their time today. In the event there may be additional questions that we don't have time for, I appreciate your willingness to answer additional questions, and the record will remain open for 2 weeks for submitted questions and answers by other members of the subcommittee. Thank you.

[Whereupon, at 12:08 p.m., the subcommittee was adjourned.]

[The prepared statements of Hon. Charles W. Dent and Hon. Paul E. Kanjorski follow:]

Congressman Charles W. Dent
Pennsylvania – 15th District
Committee on Government Reform:
Subcommittee on Federalism and the Census: "What Can Be Done to Spur Re-Development at America's Brownfield Sites"
Tuesday April 5, 2005

I would like to thank Chairman Turner for holding this very important Subcommittee hearing. It has provided us an excellent opportunity to address the issue of brownfields here in America. Brownfields are both an important environmental and economic issue. How we decide to clean-up and reuse brownfields across the country will be an important question to resolve as we go about the task of promoting industrial development, especially in those areas that were once dominated by traditional manufacturing concerns, such as auto-making, steel fabrication, and ship-building.

It is often more economically convenient for the owner of a contaminated piece of property to simply abandon that land, rather than pay the costs to clean it up. There are many disincentives to cleaning-up a contaminated property, including the high cost of funding a clean-up project that may be more expensive than the value of the land itself.

In the South Side of Bethlehem, Pennsylvania, in the heart of my Congressional district, lies the largest brownfield site in the country. It is the former main manufacturing facility of the Bethlehem Steel Corporation. This old plant contains railroad tracks, abandoned mills, and left-over plant and equipment on some 1800 acres of land that run along the banks of the Lehigh River. Steel making began here in 1857, and it expanded greatly during the early part of the 20th century. By the 1950s the company had become the nation's second largest steel producer, and much of that work was done at this Bethlehem site. The area also played a vital role in national defense: During the Second World War the steel that formed the basis for the 16-inch armor plating on battleships such as the Missouri and Wisconsin was rolled at this site. For many years, this site was the economic backbone of the Lehigh Valley.

By the 1990s, however, the Bethlehem Steel Corporation found that it could not longer effectively compete against foreign steel products, and in 1995 this plant closed its doors, leaving 375 tons of soil contaminated with arsenic and lead at the site. During the last years of its existence the Company operated the plant, which had been classified as a brownfield site, under guidelines set up by the federal Resource Conservation and Recovery Act (RCRA) in 1976. This Act permitted operation of the plant only if the company could demonstrate that it was capable of managing and cleaning up the hazardous wastes that accompany steel production.

While the steel company is no longer with us, the environmental clean-up of this site has proceeded, and the future of this piece of property appears bright. Local developers have put forth plans to build thereon an entertainment complex which will include a hotel, a conference center, two recreational ice-rinks, a movie theater, retail shops, and several restaurants. If all goes according to plan, the site will eventually become home to the Smithsonian Institution's National Museum of Industrial History.

These great accomplishments are a result of the Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Protection (PADEP) working together to establish state and federal RCRA cleanup requirements with ONE plan. PA was the first state to sign a Memorandum of Agreement (MOA) with the EPA that included three federal program areas: the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), and the Toxic Substance Control Act (TSCA).

I think that this type of state and federal partnership should be encouraged throughout the country, an alliance that ideally would bring together not only the EPA and a particular state's environmental agency, but other federal agencies as well. For example, it has come to my attention that the U.S. Department of Housing and Urban Development (HUD) will not allow its grant money to be used for projects built on sites with levels of residual contamination above unrestricted use standards, or on land that contains groundwater monitoring wells, or on property with any form of use limitation. Therefore, both soil and groundwater must meet the residential statewide health standard in order for

a project to receive funding from HUD. This often disqualifies sites for possible redevelopment: groundwater clean-up is very expensive, and imposing this requirement upon a developer will have a chilling effect on any project if the re-developer still has to pay for that clean-up even though the groundwater is not to be used as a public water supply source. It would be beneficial to brownfield redevelopment if HUD were to modify its grant requirements to include an acceptance of the standards imposed pursuant to state voluntary cleanup programs. Further, if HUD will not permit its grant funds to be used for housing on remediated property, projects outside urban limits will be the only likely recipients of these funds, which is counterproductive for anti-sprawl initiatives.

It is clear that we must continue to work at cleaning-up and redeveloping America's brownfield sites. We need to do this in order to encourage job growth, promote the development of transportation and infrastructure, and reduce urban-sprawl—while at the same time saving greenfields. While many strides have been made, it has become increasingly obvious that there is still much to be done. Thank you, Chairman Turner, for acknowledging the importance of this issue, and I look forward to working with this Subcommittee to further address the re-development of America's brownfield sites.

OPENING STATEMENT OF
CONGRESSMAN PAUL E. KANJORSKI

COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

LANDS OF LOST OPPORTUNITY: WHAT CAN BE DONE TO SPUR RE-DEVELOPMENT AT AMERICA'S BROWNFIELDS SITES

APRIL 5, 2005

Thank you, Chairman Turner. I appreciate the opportunity at the start of this hearing to offer my views about the Brownfields Program.

In 2002, Congress took a significant step to remedy the persistent funding problems associated with the cleanup of mine-scarred lands with the passage of Small Business Liability and Brownfields Revitalization Act. Through the course of our debates over this legislation, we expanded the Environmental Protection Agency's (EPA) definition of the term "brownfields" to include mine-scarred lands, thus making them eligible for federal assistance through EPA's brownfield grant program.

As a result, many local municipalities and non-profit entities in my district have received brownfield grants to remediate environmental contamination, including mine-scarred lands. One organization, the Earth Conservancy, was one of the first recipients of a brownfield grant to clean up mine-scarred lands.

Although the program has seen many successes, I am concerned about the level of funding that the program has received. It is my understanding that the President's budget calls for an increase this year. Nevertheless, Congress has yet to fund this program at the full-authorized amount.

In addition, I remain concerned that many local entities are not aware of the funding that this program provides, particularly with respect to cleanup of mine-scarred lands. In fiscal year 2004, the EPA received 670 brownfield grant application. Of that number, only 24 proposals were for remediation of mine-scarred lands. Also, in reviewing the testimony from the Government Accountability Office, I learned that the brownfield revolving loan fund program has been severely underutilized. To alleviate this situation, it is my hope that we can looks at ways to expand and strengthen EPA's outreach efforts.

As a result, I look forward to hearing the testimony from our witnesses. I am also interested in working with the members of the Committee to address these issues and look for solutions to make this program more effective.

In closing, Mr. Chairman, thank you again for the opportunity to express my initial thoughts on these matters, and I yield back the balance of my time.

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