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THE OHIO EXPERIENCE: WHAT CAN BE DONE TO SPUR BROWNFIELD REDEVELOPMENT IN AMERICA'S HEARTLAND?

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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THE OHIO EXPERIENCE: WHAT CAN BE DONE TO SPUR BROWNFIELD REDEVELOPMENT IN AMERICA'S HEARTLAND?

MONDAY, MAY 16, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERALISM AND THE CENSUS,
COMMITTEE ON GOVERNMENT REFORM,
Cleveland, OH.

The subcommittee met, pursuant to notice, at 10:30 a.m., in the 1914 Lounge, The Thwing Center at Case Western Reserve University, 11111 Euclid Avenue, Cleveland, OH, the Honorable Michael R. Turner (chairman of the subcommittee) presiding.

Present: Representatives Turner, LaTourette, and Jones of Ohio.

Staff present: John Cuaderes, staff director; Shannon Weinberg, counsel; and Juliana French, clerk.

Mr. HUNTER. Good morning. I'm Edward Hunter, president of Case Western Reserve University. I just wanted to offer a brief welcome to all of you. I want to thank Chairman Turner for hosting this hearing here on our campus for his subcommittee. We really are honored to have you all here today.

It's a special honor because Congressman Turner is an alumnus of Case Western Reserve University, of our law school. I also want to welcome Congressman LaTourette, who is also a great friend of Case Western Reserve.

And I also want to thank all of the people who are testifying here today—for your efforts to help with urban redevelopment and brownfield redevelopment. As you know, Case has made a major commitment to urban redevelopment in this area. And so this is a very, very important issue for us locally, for the State of Ohio, and nationally as well.

I hope you have a very good time here. I hope you'll take some time to walk around and see the campus, because we're trying to walk the talk. As you may know, we've tried to do some interventions here in the local area in the way we're building our new residential villages, reaching out to the community, moving some of our back office people downtown to help with downtown revitalization.

We started a home buyer program here at Case so any employee, faculty or staff member of Case gets a very generous sum of money from the university to buy a home, if they buy a house in the city of Cleveland. And since we started that program, for the spast year we've had a house a week bought in the city of Cleveland.

There are a lot of other innovative programs that we've had in working with minority contractors to do a lot of the work in these areas. So it's been a very, very wonderful collaboration between our university and the city of Cleveland. So thank you, again, for honoring us by hosting this here on campus and enjoy your time here. Thank you.

Mr. TURNER. With that, we'll call to order the Subcommittee of Federalism and the Census. I appreciate Case Western Reserve University hosting us and I appreciate the attendance by my colleague, Steven LaTourette. We're going to be joined by Stephanie Tubbs Jones, who currently is in an event in downtown Cleveland and encouraged us to go ahead and proceed. So we'll begin with panel one, taking testimony, and then Ms. Tubbs should be joining us later.

I have a short statement to read in welcoming everybody to the subcommittee hearing. This is a followup to a hearing that we held on the same topic in Washington, DC, on April 5, 2005. This is the subcommittee's first field hearing and our first opportunity to interact with individual communities on a more personal basis.

Hearings in D.C. have been informative and helpful. All too often we only get the inside-the-beltway viewpoint. So the field hearings give us the opportunity to reach out to the public and learn firsthand what is occurring in this important topic of brownfield development. I'm very pleased with the response to the hearing, both from our great number of witnesses and the public in attendance here today. I would also like to express my appreciation to the city of Cleveland for hosting us.

We have a great number of witnesses to present and we are here to listen to you. And in the interest of time, the full statements of the written statements that are being entered into the record are out at the press table up front. And we're going to keep our opening comments short so we can get the witnesses and hear what you guys are doing to improve our communities in the area of brownfields.

Our first panel includes Joseph Dufficy, Chief of the Brownfields and Early Action Section, Environmental Protection Agency Region 5; Amy Yersavich, manager, Voluntary Action Program, Ohio EPA; the Honorary Frank Sarosy, mayor, Village of Fairport Harbor, OH; the Honorable Daniel Pocek, mayor, city of Bedford, OH; Tracey Nichols, assistant director for economic development, Department of Development, Cuyahoga County, OH; and Casey Stephens, manager of public services, Brownfield Coordination, Division of Environmental Services, city of Toledo.

We'll begin with Mr. Dufficy. My colleague, Mr. LaTourette, has opening comments, also.

[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: ***"The Ohio Experience: What Can Be Done to Spur Brownfield Redevelopment in America's Heartland?"***

Monday, May 16, 2005
10:30 a.m.
Case Western Reserve University
Cleveland, Ohio

OPENING STATEMENT

Welcome to the Subcommittee on Federalism and the Census' field hearing entitled "*The Ohio Experience: What Can Be Done to Spur Brownfield Redevelopment in America's Heartland*?" This is a follow up to a hearing held on the same topic in Washington, DC on April 5, 2005. This is the Subcommittee's first field hearing and our first opportunity to interact with individual communities on a more personal basis. Our hearings in DC are informative and helpful, but all too often we only get the inside-the-beltway viewpoint. Field hearings allow us to reach out to the public and learn first-hand of your concerns and suggestions. I am very pleased with the response to this hearing – both from our great number of witnesses and from the public in attendance here today. I would also like to express my appreciation to the City of Cleveland for hosting us and to Dr. Edward Hundert, president of Case Western Reserve University, and his staff for sharing their facilities and for their accommodating efforts.

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. In our state of Ohio alone, there are an estimated 4,000 to 6,000 of these blighted properties. 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 choices, 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. The Act addressed funding and liability issues -- strong first steps in encouraging brownfields redevelopment. The Subcommittee looks forward to hearing from EPA on the effect the brownfields program and new liability relief has achieved in Region V and in Ohio specifically.

Last year, I, along with Chairman Tom Davis, requested that the Government Accountability Office (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.

In response to that study, I plan to introduce legislation similar to H.R. 4480 from last Congress, the "Brownfields Revitalization Act of 2004." H.R. 4480 proposed a tax credit of up to 50 percent 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 percent 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 percent of remediation costs to receive liability release for 100 percent of the approved remediation plan and demolition costs.

The bill I plan to introduce in the near future will be revised to address some of the concerns of stakeholders. The new 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 will also provide 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 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 and the impact of the EPA's brownfields program across the state of Ohio. We also hope to hear your ideas for improving or complementing the EPA brownfields program in order to encourage more aggressive redevelopment.

Our first panel consists of six witnesses from the national, state, and municipal governments.

- Joseph Dufficy, Chief of the Brownfields and Early Action Section in the Environmental Protection Agency Region 5 Office;
- Amy Yersavich, Manager of the Voluntary Action Program at the Ohio EPA;
- The Honorable Frank Sarosy, Mayor of the Village of Fairport Harbor, Ohio;
- The Honorable Daniel Pocek, Mayor of the City of Bedford, Ohio;
- Tracy Nichols, Assistant Director for Economic Development for the Cuyahoga County Department of Development; and
- Casey Stephens, Manager of Public Services and Brownfield Coordinator for the City of Toledo Division of Environmental Services.

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

- Alex Machaskee, President and Publisher of The Plain Dealer;
- Todd Davis, CEO of Hemisphere Development, LLC;
- Thomas Stone, Executive Director of the Mt. Pleasant NOW Development Corporation;
- Barry Franz, Principal Engineer of Civil & Environmental Consultants, Inc.;
- Craig Kasper, CEO of Hull & Associates, Inc.; and
- Kevin O'Brien, Executive Director of the Great Lakes Environmental Finance Center at the Cleveland State University Maxine Goodman Levin College of Urban Affairs.

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. LATOURETTE. Well, thank you very much. And I guess you want to move along, so I'll be mercifully brief.

I want to thank you, Congressman Turner, for coming to Cleveland, OH. Welcome to Cleveland, OH for this hearing. The Congressman has hid his light under a bushel basket a little bit in that he has previously introduced and I understand again will introduce legislation dealing with brownfield remediation, especially in urban cities.

He's a former mayor of Dayton, so he comes to us in the U.S. Congress as someone who is looked to with a great deal of admiration when it comes to dealing with America's cities.

He's also been placed in charge by the Speaker of the House, Mr. Hastert, of the task force that looks at the unique problems that face cities across the country. So it's an honor for us to have you here and we appreciate you having this hearing.

And just a couple of observations about the panels we put together. And I want to, first of all, indicate to President Hunter, my son will be a freshman here in the fall and I took the opportunity to walk over to the undergraduate admissions office before this hearing began. And President Hunter is right, there is a building that is completely missing from the corner of Adelbert and Euclid Avenue. It's been apparently torn down since my last visit. So he is walking the walk and doing good things for the University Circle area.

On the first panel, Mr. Chairman, you have two people, not to single out anybody in particular, but Mayor Sarosy of Fairport Harbor is an outstanding mayor of a good, solid community. And he has had the vision that sometimes is lacking in other parts of the State that treats Lake Erie as an asset and is doing everything to move his village forward, so I'm glad he's here.

Next to him is someone I lost to in the district, Mayor Pocek, the mayor of Bedford. And I very much liked representing that area, but I also know Mayor Pocek has done great work in his part of the world.

On the second panel you have a fellow by the name of Todd Davis. I know that Mr. Machaskee just joined us, but I'm going to hold up a rival newspaper. In Sunday's Lake County News Herald, anyone who hasn't seen it, there's a very exciting long article about the old Diamond Shamrock property.

Those of us in Lake County were devastated back in the sixties, like the news going on here in Cleveland with NASA Glenn and DFAS, the Diamond left, and that's where most of the people in Fairport worked was the Diamond. Most of the people in Painesville worked at the Diamond. And Todd Davis, who is on your second panel, is in charge of an organization called Lakeview Bluffs, and I think we can be very excited to hear what he has to say, as well.

So thank you for coming to Cleveland, thanks to all of the witnesses for being here, and thank you, Mr. Chairman.

Mr. TURNER. I really appreciate Mr. LaTourette's participation in the committee and permitting us to be able to move forward with the witnesses that he's recommended.

This committee, it's our policy to swear in witnesses prior to their testimony, so I'm going to ask, if you would, please, stand and raise your right hands.

[Witnesses sworn.]

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

Mr. Dufficy, we will begin with you.

STATEMENTS OF JOSEPH DUFFICY, CHIEF, BROWNFIELDS AND EARLY ACTION SECTION I, ENVIRONMENTAL PROTECTION AGENCY REGION 5 OFFICE; AMY YERSAVICH, MANAGER, VOLUNTARY ACTION PROGRAM, OHIO EPA; FRANK SAROSY, MAYOR, VILLAGE OF FAIRPORT HARBOR, OH; DANIEL POCEK, MAYOR, CITY OF BEDFORD, OH; TRACEY NICHOLS, ASSISTANT DIRECTOR FOR ECONOMIC DEVELOPMENT, CUYAHOGA COUNTY DEPARTMENT OF DEVELOPMENT; AND CASEY STEPHENS, MANAGER OF PUBLIC SERVICES AND BROWNFIELD COORDINATOR, CITY OF TOLEDO DIVISION OF ENVIRONMENTAL SERVICES

STATEMENT OF JOSEPH DUFFICY

Mr. DUFFICY. Thank you, Mr. Chairman. Good morning, Mr. Chairman, members of the subcommittee. My name is Joe Dufficy. I manage the Brownfield and Early Action Section with U.S. EPA's Region 5 Office in Chicago. I'm appearing here today to discuss the EPA'S Brownfields Program and our efforts in the State of Ohio.

More than a decade ago, U.S. EPA identified a problem facing local communities in their efforts to development properties that were contaminated or potentially contaminated with hazardous substances. The private sector and public sectors were extremely hesitant to get involved at these sites which became known as brownfields.

It was here in Cuyahoga County that U.S. EPA began providing seed money to local governments to inventory sites and assessment for contamination. Congress also ultimately enacted legislation that provides tax incentives to promote private sector cleanup and redevelopment of brownfields.

Over the years, U.S. EPA also had grants to capitalize revolving loan funds for cleanup. The agency also provides money for job training opportunities for employment at brownfield communities.

Since U.S. EPA's initial efforts, States, tribes and local units of government as well as non-for-profit organizations have began to focus us on brownfield cleanup and redevelopment. The Small Business Liability Relief and Brownfields Revitalization Act broadened the reach of the U.S. EPA grant programs by also providing statutory liability protection to the sector participation in brownfield's cleanup and redevelopment.

Under the new brownfields law, U.S. EPA can now award direct cleanup grants to the public section as well as not-for-profit entities that own the property. The new law also broadens the definition of what constitutes a brownfield. The U.S. EPA can now award Brownfield moneys to sites contaminated with petroleum as well as mine-scarred lands and sites contaminated by controlled substances.

The grand selection and award process for fiscal year 2005 culminated last week with the announcement of over 300 new grants, 19 of which are here in the State of Ohio. The newest grants include 14 assessment awards, four clean-up projects and one revolving loan fund for a total of $7,750,000 here in the State.

As a whole, the State of Ohio constitutes as well as the 40 communities here that have received the U.S. EPA funding one of the largest concentrations of U.S. EPA funding nationwide. The Ohio Department of Development's Revolving Loan Fund is one of the largest U.S. EPA loan funds in the Nation with over $7 million right now.

Currently more than $65 million in redevelopment work is ongoing across all of U.S. EPA funded projects. Ohio communities have also inventoried over 10,000 brownfield sites. Ohio EPA and U.S. EPA have combined resources to perform an additional 30 assessments onsites not targeted by communities for part of the competitive grants program. Both agencies have coordinated their activities to minimize duplication of efforts and reached the largest number of communities possible.

One thing is clear, that notwithstanding all of the efforts the Federal, State, local units of government, we will never be able in the public sector to clean up the hundreds of thousands of sites that are out there. The only way that will happen is with significant increases in funding and influences from the private sector.

Mr. Chairman, that completes my statement and I would be pleased to answer any questions.

[The prepared statement of Mr. Dufficy follows:]

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STATEMENT OF JOSEPH DUFFICY
CHIEF, BROWNFIELD AND EARLY ACTION SECTION
SUPERFUND DIVISION
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5
BEFORE THE SUBCOMMITTEE ON
FEDERALISM AND THE CENSUS
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 16, 2005

INTRODUCTION

Good morning, Mr. Chairman, and members of the Subcommittee. My name is Joe Dufficy. I am the Chief of the Brownfield and Early Action Section in U.S. EPA's Region 5 office in Chicago. I am appearing today to discuss EPA's Brownfields Program and our efforts in the State of Ohio, which is located in Region 5.

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.

In many respects, EPA's Brownfield program began here in northern Ohio 12 years ago with the Agency's initial grants and seed money being given to the Cuyahoga County Planning Commission's Brownfield Working Group, additional financial assistance to Cuyahoga County Community College's job training program and a research grant to Cleveland State University to examine some of the barriers to urban redevelopment. Nationwide, 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.

Strong support by President Bush and Congress for 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 EPA funding, 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. Over 110 of those grants and more than $45 million have come to the communities and states of Region 5.

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, and assess properties, and 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 Little Falls, Minnesota, the city used 2 Brownfields Cleanup Grants to cleanup the Hennepin Paper Mill, located on the Mississippi River. The mill, which was partially destroyed in an earlier fire, was contaminated with hazardous waste and petroleum. Working closely with EPA Region 5 and the State of Minnesota, Little Falls has already completed cleanup and today the site serves as both a new riverside park for the city and an outdoor museum.

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.

Here again, Cuyahoga County serves up another first. The County was one of EPA's first loan fund recipients. After successfully loaning out all of the funds and recovering the payments, the County applied for and became the first Federal loan fund recipient of any kind to close out the program and direct the money toward other appropriate uses.

Since the loan program's inception, Region 5 communities have received more than $40 million and have made over 33% of all loans in the country.

Under EPA's brownfields authority, sites contaminated with petroleum are now eligible for cleanup. The Brownfields Law directs 25% of assessment and cleanup grant funding be directed to sites with petroleum contamination. Indeed, since passage of the Brownfields 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 culminated last week with the announcement of over 300 new grants, 19 of which are here in Ohio.

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. Here in Region 5, we have MOAs with all 6 states and have maintained close partnerships with them since the inception of the Brownfield Program. These partnerships are an integral part of our success.

Ohio Program

As a whole, the State of Ohio and the nearly 40 communities here who have received EPA Brownfield's funding represent one of the nation's largest concentrations of Brownfield resources. The Ohio Department of Development's Brownfield Cleanup Revolving Loan Fund Program is now one of the largest brownfields loan programs in the country with $7 million. Currently, more than $65 million in redevelopment work is ongoing across the EPA funded projects. Ohio communities have inventoried over 10,000 sites. Ohio EPA and USEPA have combined resources to perform an additional 30 assessments on sites not targeted by communities applying for competitive grants. The Agencies have coordinated their activities to minimize duplication of efforts and reach the largest number of communities possible.

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 the Comprehensive Environmental Response, Compensation, and Liability Act (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.

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.

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. Continuing our success will require ever more interaction and collaboration among all levels of government, the private sector and non-governmental organizations. EPA is dedicated to continuing our efforts to reach out to our partners and the Administration is committed to continuing strong funding for the program.

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. Ms. Yersavich.

STATEMENT OF AMY YERSAVICH

Ms. YERSAVICH. Thank you, Mr. Chairman. Thank you, Mr. Chairman and members of the subcommittee. My name is Amy Yersavich. I'm the manager of the Voluntary Action Program at Ohio EPA. And I would like to thank you for the opportunity to speak today on behalf of Joseph Koncelik, director of Ohio EPA, about the brownfield redevelopment needs of Ohio communities. In both large urban areas and small towns, brownfields exist and create not only blights, but environmental and safety hazards. These brownfields are also a reminder of jobs lost and opportunities missed.

Ohio has operated a successful brownfield cleanup program, known as the Voluntary Action Program, since 1994 when the legislation for the program was signed by Senator Voinovich. Thank you God for Voinovich. The program allows for licensed environmental professionals to privately clean up Ohio brownfields using state-of-the-art technical requirements adopted by Ohio EPA.

Once the properties are cleaned up appropriately, Ohio EPA reviews the documentation and issues a release from State civil liability for the cleanup. To date, over 200 properties have been cleaned up, both private and public, under the Voluntary Action Program and technical assistance for cleanup has been provided to over 300 more brownfield owners and volunteers. In return, approximately 7,000 new Ohio part-time and full-time jobs have been created at these redeveloped sites.

Ohio is also operating an extremely successful brownfield cleanup grant program known as the Clean Ohio Fund. The Clean Ohio Fund was established in November 2000 when Ohio voters passed Issue 1. The Clean Ohio Fund provides cleanup assessment grants, up to $3 million per site, to municipalities for brownfields that they own or hold interest in. To date, the Clean Ohio Fund provided over 15 million in assistance funding and over 200 million in revitalization funding to 88 sites across Ohio. In return, the Clean Ohio Fund has seen $930 million in investment in these properties and the creation of 6,700 new jobs.

U.S. EPA, through Joe and others, also offers many attractive brownfield cleanup incentives with funding made available through the Small Business Liability Relief and Brownfields Revitalization Act of 2002. As a result of this act, 29 cities and towns in Ohio have received grant funding for investigation and cleanup of brownfield sites that have blighted their communities. This fund has been a tremendous help toward revitalizing these communities, urban cores and has resulted in both job creation and retention.

Despite all the innovative financial incentive programs and technical assistance available to make brownfield cleanup easier at former commercial industrial sites, there are still obstacles. Encouraging private developers to take on brownfield redevelopment projects at sites with large amounts of contamination or where complex cleanup is needed are a few of those obstacles.

Most government brownfield incentives are made available only to local governments or other governmental entities. Providing a tax credit that would encourage the private sector to increase their

brownfields redevelopment work, as you have proposed, Chairman Turner, would provide a tremendous boost to Ohio's urban core and small town revitalization efforts.

Chairman Turner and members of the subcommittee, I thank you for allowing me to testify at this hearing today. On behalf of Director Koncelik and the many communities in Ohio that are dealing with challenges of brownfield redevelopment, your interest is greatly appreciated.

[The prepared statement of Ms. Yersavich follows:]

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Testimony before the
Subcommittee on Federalism and the Census
Committee on Government Reform
by Amy Yersavich, Voluntary Action Program Manager
Ohio Environmental Protection Agency

May 16, 2005

Chairman Turner and members of the Subcommittee, thank you for the opportunity to speak on behalf of Joseph Koncelik, director of Ohio EPA, about the brownfield redevelopment needs of Ohio communities. In both our large urban areas and small towns, brownfields exist and create not only blight, but environmental and safety hazards. These brownfields are also a reminder of jobs lost and opportunities missed.

Ohio has operated a successful brownfields cleanup program, known as the Voluntary Action Program, since 1994 when the legislation for the program was signed by Senator (then Governor) Voinovich. The program allows for licensed environmental professionals to privately cleanup Ohio brownfields, using state-of-the-art technical requirements adopted by Ohio EPA. Once the properties are cleaned up appropriately, Ohio EPA reviews the cleanup documentation and issues a release from state civil liability for the cleanup. To date, over 200 properties have been cleaned up under the Voluntary Action Program and technical assistance for cleanup has been provided by Ohio EPA to assist over 300 more brownfield owners and volunteers. In return, approximately 7000 new Ohio part-time and full-time jobs have been created at these redeveloped sites.

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U.S. EPA also offers many very attractive brownfield cleanup incentives with funding made available through the Small Business Liability Relief and Brownfields Revitalization Act that President Bush signed on January 11, 2002. As result of this Act, 29 cities and towns in Ohio have received grant funding for investigation and cleanup of brownfield sites that have blighted their communities. This funding has been a tremendous help toward revitalizing these communities= urban cores and has resulted in job creation and retention.

Despite all the innovative financial incentive programs and technical assistance available to make brownfield cleanup easier, there still remain obstacles to the redevelopment of many former commercial and industrial sites. Encouraging private developers to take on brownfield redevelopment projects at sites with large amounts of contamination or where complex cleanup is needed are a few of those obstacles. Most government brownfield incentives are available only to local governments or other

public entities. Providing a tax credit that would encourage the private sector to increase their brownfields redevelopment work, as you have proposed Chairman Turner, would provide a tremendous boost to Ohio=s urban core and small town revitalization efforts.

Chairman Turner and members of the Subcommittee, thank you for allowing me to testify at this hearing today. On behalf of Director Koncelik and the many communities in Ohio that are dealing with the challenges of brownfield redevelopment, your interest is much appreciated.

Mr. TURNER. Mr. Sarosy.

STATEMENT OF FRANK SAROSY

Mr. SAROSY. Mr. Chairman and distinguished members of the subcommittee, I would like to thank you for the opportunity to be a part of this important discussion. I am Frank Sarosy, mayor of the Village of Fairport Harbor, OH. And on behalf of my community, I would like to discuss how one brownfield remediation has had a positive impact on my community.

Fairport is an ideal community sitting on the shorelines of Lake Erie. On the eastern edge of the village, however, there had been a large vacant parcel of land that had sat unused for years. This land was formerly the home of Diamond Shamrock Painesville Works. It was more than 1,000 acres of land that straddles Fairport Harbor, the city of Painesville and Painesville Township. This was some of our most desirable lakefront property, and that was hugging the shoreline atop of a scenic stretch of bluffs. We could not capitalize on it, however, because its former use as the home of Diamond Shamrock had left it a major brownfield site.

The land had been put to many uses over the years, such as serving as a 500-acre settling pond, as a home to heavy manufacturing and as a landfill. In 1980, the U.S. EPA initiated action to remedy chromium contamination at the site, which resulted in the construction of a 120-acre clay cap over the impacted area. The Ohio EPA began enforcement activities for the rest of the site in 1989.

This property was a perfect example of how a brownfield can affect a community. At its height, the Diamond Shamrock property employed more than 3,000 people. And after it closed in 1976, Fairport Harbor lost not only those jobs, but also the use of this land. Until we could find some way to remedy the contamination of the land, it would remain idle and unused.

Fortunately, Hemisphere Development stepped into the picture in 2002. Their president, Todd Davis, brought his nationally recognized expertise to bear on this project and put forward a vision that will change Fairport Harbor and the neighboring communities.

In a partnership with Fairport Harbor, the Ohio EPA, Lake County, Lake County MetroParks, and local municipalities, Hemisphere has developed a plan for redeveloping the site.

The formerly used Diamond Shamrock site is now known as Lakeview Bluffs and, once completed, it will be a national model for brownfield redevelopment. The mixed-use project will feature a variety of housing options, commercial development, public park, not to mention breathtaking views of Lake Erie and some of the best steelhead trout fishing in the world.

Hemisphere is creating several recreation destinations linked by aesthetically pleasing trails, permanent public access to the Grand River, a commercial vineyard, a trout club, a winery, and new residential development overlooking both Lake Erie and the Grand River.

The land's many rich endowments include more than a linear mile of shoreline, breakwall protection for the development of a commercial marina in the harbor, and a stretch of scenic Grand River that is renowned by fishermen as one of the best spots in the Nation to catch a steelhead trout.

Lakeview Bluffs represents an unprecedented opportunity resolve years of contentious litigation and reclaim one of Ohio's most promising brownfield sites. Ultimately, the project will be one of the largest and most comprehensive brownfield developments in the United States, serving as a national model for the effective integration of green space planning, reclamation and redevelopment. Further, the project represents the best example of the amazing community transformation that can occur through the power of the public private/partnerships.

And I would like to thank you.

[The prepared statement of Mr. Sarosy follows:]

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WRITTEN TESTIMONY BY

FRANK J. SAROSY
MAYOR OF THE VILLAGE OF FAIRPORT HARBOR, OHIO
220 THIRD STREET
FAIRPORT HARBOR, OH 44077
1-440-352-3620
WWW.FAIRPORTHARBOR.ORG

PRESENTED TO

THE U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FEDERALISM AND THE CENSUS
CONGRESSMAN MICHAEL R. TURNER, CHAIRMAN

MAY 16, 2005

Mr. Chairman and distinguished Members of the Subcommittee, I would like to thank you for the opportunity to be a part of this important discussion. I am Frank Sarosy, Mayor of the Village of Fairport Harbor, OH. On behalf of my community, I would like to discuss how one brownfield remediation has had a positive impact on my community.

Fairport Harbor is an ideal community sitting on the shores of Lake Erie. On the eastern edge of our village, however, there had been a large and vacant parcel of land that had sat unused for years. This land was formerly the home of the Diamond Shamrock Painesville Works. It was more than 1,000 acres of land that straddles Fairport Harbor, the City of Painesville and Painesville Township.

This was some our most desirable lakefront property, hugging the shoreline atop a scenic stretch of bluffs. We could not capitalize on it, however, because its former use as the home of Diamond Shamrock had left it a major brownfield site.

The land had been put to many uses over the years, such as serving as a 500-acre settling pond, as a home to heavy manufacturing and as a landfill. In 1980, the U.S. EPA initiated action to remedy chromium contamination at the site, which resulted in the construction of a 120-acre clay cap over the impacted area. The Ohio EPA began enforcement activities for the rest of the site in 1989.

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Lakeview Bluffs represents an unprecedented opportunity to resolve years of contentious litigation and reclaim one of Ohio's most promising brownfield sites. Ultimately, the project will be one of the largest and most comprehensive brownfield redevelopments in the United States, serving as a national model for the effective integration of green space planning, reclamation and redevelopment. Further, the project represents the best example of the amazing community transformation that can occur through the power of public private partnerships.

Mr. TURNER. Mr. Pocek.

STATEMENT OF DANIEL POCEK

Mr. POCEK. My name is Daniel Pocek. I'm the mayor of the city of Bedford. We are a historical city of 14,000 plus residents, we have a downtown and neighborhoods. We also have Taylor Chair, the oldest manufacturing concern in the State of Ohio in continuous operations since 1816. In essence, we have a history.

The city of Bedford has been committed to redevelopment of the former Brush Wellman site located at 200 Egbert Road in Bedford, OH. This formerly vibrant site has been vacant since 1986 and previously employed 400 plus employees and provided the City with beneficial tax revenue. The site needs to be fully developed to meet the needs of the community.

With an unemployment rate of 6.4 percent that includes 8 surrounding communities and the city's poverty rate doubling from census year 1990 to 2000 to 8 percent of its 14,212 residents, it's imperative that the site be developed to its full potential.

With the balance of land uses, the city's current makeup of industrial land is 3.3 percent and 8.8 percent of the total land mass is commercial. This leaves the site as the only major redevelopment opportunity left in the city of Bedford's 5.4 square mile radius. The city relies on its land uses to be the most practical and economical for its residents and the city. Light industrial commercial land use at this site will best address the city and community needs.

With this, the site can prosper, not only for the business sector, but also for the potential of the employment it can create. There's an estimated 50 acres for planned mixed use development, with a potential of 300,000 square feet of developable space, increasing property values from $318,200 in 2004 to $28 million in 2008, and the likelihood of creating and retaining up to 500 plus jobs.

The redevelopment site has been vacant almost for 20 years. It has generally little or no tax revenue and has zero employment base for the city. The city of Bedford supported the redevelopment of the site that maximizes the developable acreage and, thus, the number of jobs created.

It was through the efforts of Cuyahoga County Commissioners, we were granted a $500,000 grant and a $500,000 loan to the project. The State of Ohio came up with almost $900,000 in funds to redevelop the infrastructure.

The final piece of the puzzle was pursued by the Cuyahoga County Development Department. They were the vehicle for the city of Bedford to apply for the BEDI Grant. The city was able to compete for this grant on an even par with much larger communities. In October 2004, they were awarded—the HUD awarded 17 grants out of over 100 applications, and we were one of them. We were the only one in the State of Ohio. With that grant, we feel we have guaranteed the economic survivability of the city and the community, as well as the region, for the next generation.

I want to thank the chairman and the members of the committee for the opportunity to appear here today. I would be happy to answer any questions you may have. Thank you.

[The prepared statement of Mr. Pocek follows:]

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STATEMENT OF DANIEL S. POCEK
MAYOR OF THE CITY OF BEDFORD
BEFORE THE SUBCOMMITTEE ON FEDERALISM
AND THE CENSUS HOUSE COMMITTEE ON GOVERNMENT REFORM

MAY 16, 2005

Mr. Chairman and members of the Subcommittee, my name is Daniel S. Pocek and I am the Mayor of the City of Bedford. We are a historical city of 14,000+ residents, we have a downtown and neighborhoods. We have Taylor Chair, one of the oldest manufacturing companies in the State of Ohio. We have a history.

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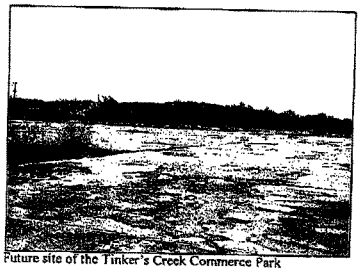
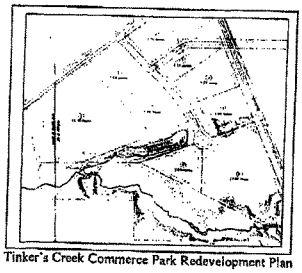
With this grant, we feel we have guaranteed the economic survivability of our community and region for the next generation.

I thank the Chairman and the members of this committee for the opportunity to appear before you today. I would be happy to answer any questions you may have.

EXHIBIT 1

HUD BEDI Grant Application
Tinker's Creek Commerce Park
Bedford, Ohio
July 15, 2004


Future site of the Tinker's Creek Commerce Park


Tinker's Creek Commerce Park Redevelopment Plan

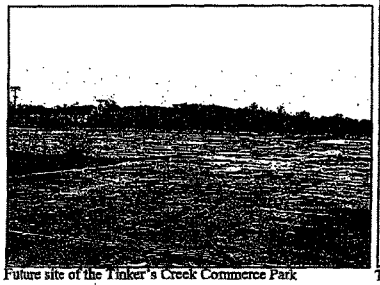
COMMISSIONERS
Jimmy Dimora
Peter Lawson Jones
Tim McCormack

Cuyahoga County Department of Development
112 Hamilton Court 4th Floor
Cleveland, Ohio 44114
Paul Oyaski, Director
(216) 443-7535
cdpxo@www.cuyahogacounty.us

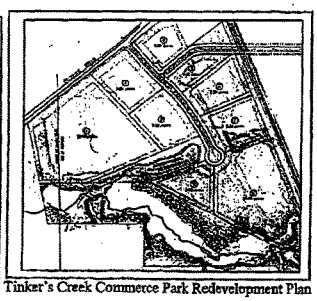
BEDI Narrative Statement

Cuyahoga County proposes to use a $2 million BEDI grant and a $4 million Section 108 Loan Guarantee to support the remediation and redevelopment of a 50-acre vacant former industrial property in the City of Bedford, located in the southeastern part of the county, into the new Tinker's Creek Commerce Park. Preliminary redevelopment plans call for the construction of over 300,000 square feet of new office and commercial/industrial buildings, with total anticipated site improvements of approximately $34 million. The BEDI funds will be used for a debt reserve in the early stages of the project, remediation of the site, and construction costs. The State of Ohio and Cuyahoga County are committing $1.8 million to be used with the BEDI Grant and Section 108 Loan Guarantee. The proposed BEDI Grant and Section 108 Loan Guarantee will not be used to assist any potentially responsible parties (PRPs) that caused contamination of the site.

Cuyahoga County is at a crossroads. Land use statistics generated by the Cuyahoga County Planning Commission reveal that our available land is nearly 95% developed. The challenges posed by redeveloping a notorious brownfield site have required Cuyahoga County and the City of Bedford to work diligently and creatively to forge a public/private partnership clearly capable of executing the redevelopment.



Future site of the Tinker's Creek Commerce Park



Tinker's Creek Commerce Park Redevelopment Plan

The 50-acre site was once a thriving industrial operation for Brush Wellman Corporation. Since the plant's closure in 1986, the land has remained vacant and unoccupied. Remnants from the site's industrial heritage, namely soil contamination and extensive building foundations, present a significant barrier to redevelopment. Remediation of this property directly addresses the Community Development Block Grant (CDBG) National Objectives of eliminating blight and providing assistance to low and moderate income families. The project is expected to generate over 500 jobs with average wages around $36,000 per year for an area extremely hard hit by unemployment. From 2000 to 2003, Cuyahoga County has lost 62,403 jobs, or 7.7%, of our employment base.

Hemisphere Development LLC (Hemisphere), a nationally recognized brownfield redeveloper, is our partner in this endeavor. An affiliated company, 200 Egbert Road LLC, will own the property. Hemisphere's Chief Executive Officer, Todd Davis, has written the American Bar Association's definitive guide on redeveloping brownfields: Brownfields: A Comprehensive Guide to Redeveloping Contaminated Properties. Mr. Davis also has been a featured speaker throughout the country and has appeared at numerous USEPA brownfield conferences.

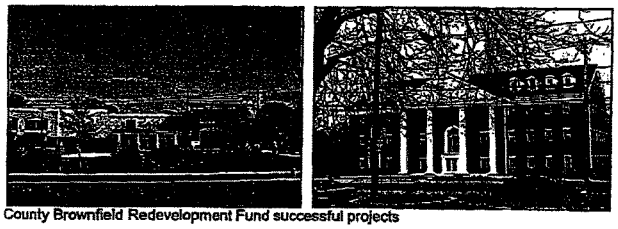
Taylor Companies, a local chair manufacturer that has operated in the City of Bedford for over 100 years and is the oldest manufacturing company in the state of Ohio, has expressed an interest in constructing a new manufacturing facility at the redevelopment site. Taylor Companies has looked at several other locations outside of Cuyahoga County and Ohio. Rehabilitating this land will provide the County with clean, clear land to accommodate Taylor Companies, as well as other commercial/industrial uses.

The site faces a number of environmental clean-up challenges caused by its historic use as a manufacturing facility for friction parts used in truck clutches and brakes over a 44-year period. The manufacturing process included heat treating steel and facing activities (metallic, non-metallic paper and graphite facing). Raw materials utilized included oil, solvents, copper powder, steel, graphite paper, iron oxides and ammonia. Waste products included spent

solvents, steel, copper, cyanide iron, ammonia and oils. Findings from Phase I and Phase II environmental assessments completed in May 2003 are discussed in detail in the "Environmental Investigation" section under "Factor 3 - Soundness of Approach".

The clean-up will be conducted under the regulatory standards of the State of Ohio's Voluntary Action Program (VAP) using Certified Professional Environmental Engineers. With oversight by the Ohio Environmental Protection Agency (Ohio EPA), the VAP has established a defined process for brownfield investigation and clean-up in Ohio.

Despite the environmental hurdles, the nature of remedial activities at the site is straightforward and includes a combination of excavating and covering areas exceeding direct-contact standards and implementing institutional and/or engineering controls. The developer has completed a Remedial Action Plan for the clean-up. Therefore, if a BEDI award is made to this project, remediation and demolition will begin as soon as practical, with a goal of having the first building pad ready by spring 2005. Estimated costs for clean-up and demolition are expected to be $2.4 million with another $1.65 million for infrastructure costs that include capping of some areas to meet Ohio EPA VAP clean-up standards.



County Brownfield Redevelopment Fund successful projects

EXHIBIT 2

well as the balance sheet of the company (see Appendix B). 200 Egbert Road LLC has committed the land to the project. A valuation of the land has been completed by CRESCO, a local real estate company. CRESCO is also marketing the property for the developer, Hemisphere. The real estate valuation is attached in Appendix F. The Taylor Companies' building should be completed by the end of 2005. Once the land is remediated and the Covenant Not to Sue is obtained, the developers will seek bank financing for the remaining lots, which will be "built to suit". In addition to Taylor Companies, two (2) other companies have expressed interest in locating on the property. The "Leverage Resources/Financial Need Sources and Uses Statement" can be found on page 26.

Rating Factor 5 - Results and Program Evaluation

1) Performance Measurement Plan

The outcomes of the project correspond with two primary national objectives: blight elimination and benefit to low-moderate income families. The project has economic development outcomes, will lead to tax base increases, and has significant environmental and community benefits.

Primary Outcomes:

- Redevelop a 50-acre brownfield site for productive use, increasing the land value of the site to $4,750,000 in 2006. (Based on a value of $318,200 in 2004).
- Catalyze construction of more than 300,000 square feet of commercial and industrial space, increasing the property value by $28 million by 2008.
- Attract new businesses to the community.
- Create at least 500 full-time low-to-moderate income jobs and 100 temporary construction jobs.
- Increase affordable home ownership opportunities for low and moderate income families and minority families.

These outcomes have several important interim benchmarks and measurements of project success before completion in 2009, including the following:

1. The site will be available for businesses starting in 2005.
2. Obtain a Covenant Not to Sue under Ohio's Voluntary Action Program for site clean-up by March, 2006.

EXHIBIT 3

APPENDIX D - RATING FACTOR 4 - SUB-FACTOR 2 - STATE FUNDING COMMITMENT INFRASTRUCTURE

State grants $850,000 for brownfield

City about halfway to $4 million goal to redevelop former Brush Wellmon site

by Emily Canning-Dean
Reporter

BEDFORD — Although it still doesn't have full funding for the Tinkers Creek Commerce Park — the former Brush Wellmon site — the city learned Monday that they are one step closer.

The State Controlling Board approved an $850,000 grant from the Ohio Department of Development for the city. The money, which comes from a state fund, is to be used to assist with infrastructure and roadway work on the 50-acre brownfield site.

"We are about halfway there for the funding of the site," said Mayor Dan Pocek.

City Manager Bob Reid said the total cost of the cleanup and development of the site will be nearly $4 million. He said the city has already received a $500,000 grant and a $500,000 loan from Cuyahoga County that will go toward the cleanup.

increase

"We're still cautiously optimistic," Reid said. "We're still waiting to find out about the grant from [Housing and Urban Development]."

Reid said the city will find out if they will receive the $2 million grant from HUD in September. He said he thinks the city might have a better chance of getting the grant when the federal government sees the site has received support from the county and the state.

One benefit that would come from the redevelopment of the site is that Taylor Chair, a company that has been manufacturing chairs in Bedford for more than 180 years, could stay in the city and move onto the site instead of moving operations out of state.

Jeff Baldassari, president of Taylor Chair said the company must relocate because it is running out of room at its present facility on Taylor Street near viaduct park.

Although he originally said Taylor Chair would have to make a decision on moving by summer, he said he would be willing to wait a few extra months to see if the city will get the HUD grant.

"We've waited more than 100 years for a new building," Baldassari said. "We can wait a

(See FUNDS — Page 12)

Funds

few more months. The city of Bedford has been great and this project seems to be moving in the right direction."

Baldassari said Taylor Chair hopes to use about 10 acres of the 50-acre site if it is developed and will construct a 100,000-square-foot building.

Bill Teats, spokesperson for the Ohio Department of Development, said Bedford was awarded the grant because its development would mean the retention and creation of jobs.

"If the Taylor Chair Co. can move onto the site, it would retain 40 jobs and create 60 more," Teats said. "We also were interested in helping the Brush Wellmon site because it is a brownfield. Any time land can be cleaned up and used for development, we want to help."

The former Brush Wellmon site, which has been vacant for 15 years, is a brownfield because the soil was contaminated by operations that manufactured brake parts.

Officials estimate the development of the site could bring close to 1,000 jobs into the city.

E-mail: ecanning@recordpub.net
Phone: 440-232-4688

From Page 1

STATEMENT OF TRACEY NICHOLS

Ms. NICHOLS. Mr. Chairman, members of the subcommittee. In my 21 years in community and economic development in the region, I have seen no other program that benefits the community to the extent that brownfields remediation does. Besides the obvious benefits to health and safety of our citizens, the economic benefits we have seen in Cuyahoga County exceed any other economic development program.

In 1998, the Board of County Commissions issued a bond to fund brownfield redevelopment. Since 1998, 21 projects have been funded, 6 projects are cleaned up with a new end user open onsite, over 1,400 jobs have been created or retained, and $562,000 in new annual property taxes have been generated, even with two projects partially tax abated. We have leveraged over $14 for every $1 the county has invested.

An important aspect of the county program is that we provide up to $1 million per project, and up to 45 percent of that amount is either a subsidy or a forgivable loan. This subsidy is critical for developers and businesses to invest in these properties.

We also have a brownfield prevention program called our site expansion program that provides up to $500,000 as a forgivable loan to companies expanding on an adjacent brownfield site rather than moving to a greenfield site in another location. In many cases, companies leave behind additional brownfield sites when they relocate.

While the program has been quite successful, some of our larger and more complicated sites could not be done without the assistance of Federal and State brownfield programs. Last year, as Mayor Pocek said, the county received a $2 million BEDI Grant and $4 million in HUD 108 funds to redevelop a 50-acre brownfield site in Bedford.

We have also received U.S. EPA funding for site assessments and revolving loan funds. While these programs have been very helpful, there needs to be more funding available. The county currently has 16 project applications for a total of $13.9 million in funding. These are for projects that are ready to go with end users.

With our current funding sources we will be $3.5 million short. Without some type of subsidy, many of these projects will not go forward. To that end, we encourage the Federal Government to go forward with tax credits as a way to attract equity investments to these projects. We appreciate that the current house bill is taking out the provision limiting funds to only communities where the census track poverty rate is 20 percent or more. That provision would have limited these funds to only 8 of our 59 communities in Cuyahoga County.

We also support increases to the U.S. EPA revolving loan fund and the HUD BEDI Grants. Both provide needed grants to help with large or more contaminated sites and help us in tougher real estate markets, such as the Greater Cleveland area.

We also strongly urge the Congress to consider providing administrative funds for these grants, such as those provided with Block Grant and Home Funds. We think this will help move funds out to the community more quickly.

I thank the committee for inviting me here today to speak on behalf of the Cuyahoga County Board of Commissioners on this important issue.

[The prepared statement of Ms. Nichols follows:]

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STATEMENT

OF

TRACEY A. NICHOLS

On Behalf Of

The Cuyahoga County Board of County Commissioners

TO

THE SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

OF THE COMMITTEE ON GOVERNMENT REFORM

OF THE

U.S. HOUSE OF REPRESENTATIVES

REGARDING

THE OHIO EXPERIENCE: WHAT CAN BE DONE TO SPUR BROWNFIELD DEVELOPMENT IN AMERICA'S HEARTLAND?

May 16, 2005

Mr. Chairman and members of the Subcommittee, my name is Tracey A. Nichols. I am the Assistant Director of the Cuyahoga County Department of Development. I have been active in the field of economic development for sixteen years.

Thank you for this opportunity to appear before you today.

THE BROWNFIELD EXPERIENCE IN CUYAHOGA COUNTY

COMMUNITY NEED

Cuyahoga County has the largest population of any Ohio county with over 1.3 million residents. The heart of the county is the City of Cleveland where nearly 500,000 persons reside (U.S. Census, 2000). Cuyahoga County residents and businesses have felt the negative effects of the current recession. The county has lost 63,900 jobs, representing 8.1% of its employment base, between 2000 and 2004. Over 20% of the county's manufacturing jobs have been lost in the past 3 years (Ohio Department of Jobs and Family Services). Cleveland especially has been negatively impacted from the loss of jobs in the area, with 12.1% unemployment. Moreover, the most recent U.S. Census American Community Survey concluded that Cleveland has the highest poverty rate of all the nation's large metropolitan areas. Since 2000, Cleveland's poverty rate rose 7% to an all-time high of 31.3%. Nearly half of the city's children were found to be living in poverty—the highest rate among America's large cities. National attention, especially from the 2004 Vice Presidential debate held in Cleveland and the press, has brought the area's poverty and unemployment issues to the forefront of all economic development activities. In fact, 5,677 people (43%) live in poverty one mile from where the Vice Presidential debate occurred (U.S. Census, 2000).

Table 1. Selected Socioeconomic Characteristics

Characteristics	Cleveland	First Suburbs Communities[3]	Cuyahoga County
Population[1]	478,403	449,041	1,393,978
Population Living in Poverty (past year)[2]	132,896	32,697	199,757
Percent Living in Poverty (past year)[2]	31.3%	7.4%	15.0%
Percent of Children under 18 years Living in Poverty (past year)[2]	46.9%	9.3%	21.7%
Population in Labor Force Unemployed[2]	33,396	10,029	65,484
Percent in Labor Force Unemployed[2]	17.4%	4.2%	9.8%

Sources: 1. U.S. Census, *2000 Census;* 2. U.S. Census, *2003 American Community Survey Tabular Profile* (Sept. 2004); 3. The First Suburbs Communities include Bedford, Bedford Heights, Brook Park, Cleveland Heights, Cuyahoga Heights, Euclid, Fairview Park, Garfield Heights, Lakewood, Maple Heights, Parma, Shaker Heights, South Euclid, University Heights, and Warrensville Heights.U.S. Census, *2000 Census* and Ohio Dept. of Job and Family Services, *Civilian Labor Force Estimates* (Sept. 2004).

The brownfield problem in Cuyahoga County predominantly affects the central city and the adjacent suburbs. The County is focusing assessment projects in the City of Cleveland and the inner-ring suburban communities. As noted above, these same areas are home to the majority of the County's residents living in poverty. The County will continue to concentrate on attracting both for-profit and non-profit developers to brownfields in the City of Cleveland and its inner-ring suburbs. There has been an unprecedented demand for redevelopment in these areas during recent years. Residents will directly benefit from the new assessments and subsequent future developments in their communities, including new job opportunities, better public services, and improvements in public health.

A 1996 U.S. EPA-funded study was completed by the Cleveland State University Great Lakes Environmental Finance Center indicating an estimated 4,623 acres of brownfields in Cuyahoga County with the majority of that land located in the City of

Cleveland and its surrounding first-ring suburbs. Cleveland, alone, has approximately 350 brownfields and between 1,000-2,000 condemned structures. Additionally, Cuyahoga County Planning Commission found that 40,000 acres, or 14%, of the County's land has at some time been devoted to an industry that has historically been known to be a higher risk for environmental contamination. Many of the brownfields that do exist in the County are quite sizable, blighted, obsolete, and have no prospect of redevelopment without public support and intervention because of the environmental and financial risks and liabilities inherent in their redevelopment.

The vacant, underutilized, and abandoned properties negatively impact property values in communities. The loss of property tax revenues reduces Cuyahoga County's local schools districts' ability to educate children, and municipalities' capability to provide basic services like police and fire protection.

Land use statistics generated by the County's Planning Commission reveal that very little undeveloped land remains in the county. Nearly 95% of available land has been developed. There are only two townships remaining in the county, and the one township with developable land is rapidly converting fields into housing. At some point during this decade, the entire county will have been fully developed. That is to say, all land not in parks will have been developed at least once—the only such county in Ohio. If Cuyahoga County is to continue to sustain viable neighborhoods, healthy commercial areas, and employment opportunities for its citizens, it must find the resources to address the environmental issues that accompany land reuse. Clearly, brownfields assessment and cleanup are key components in this endeavor.

HISTORY OF CUYAHOGA COUNTY'S BROWNFIELD PROGRAM

Cuyahoga County convened a Brownfield Working Group in 1993 to investigate best practices around the country and establish a program to address the large number of brownfield sites in Cuyahoga County, a large urban county which includes Cleveland, Ohio. Once the State of Ohio created the Voluntary Action Program, the Working Group determined there was a need to create a fund to help identify, assess and remediate brownfield sites in Cuyahoga County. It was determined early in the process that there was a need for public subsidy of these projects, to assist communities in overcoming the costs of remediation and to attract developers who could make more money funding projects in greenfields.

The Working Group collaborated with a group of local partners including banks, elected officials and foundations. In 1998, a fund was created with the leadership of the Cuyahoga County Board of County Commissioners, by issuing debt for redeveloping Brownfields. Cuyahoga County was one of the first and few existing counties in the country to issue bonds specifically for the cleanup and redevelopment of brownfield sites. The local foundations also provided $200,000 in grants for site assessments. Local banks pledged additional funding, but it was determined during the process that the funding still did not work for brownfield sites where risk remained too high for most banks to participate in cleanup. The banks remain our partners by funding development on sites after the "No Further Action" letter is received.

The initial fund provided a subsidy based on the distress of a community, from 25% to 45%, on a total funding amount of $1 million for non-profits and local communities who purchased Brownfield sites and worked to remediate them with a planned end use. Unlike funds provided by entities such as the USEPA and the State of Ohio, the county's fund could be used for assessment, remediation, acquisition and demolition on the site. Developers and local business owners who were not potential reliable parties (PRP's) could also apply for $1 million in low interest loans, but were not eligible for the subsidy.

There were several successful projects funded from 1998 to 2001, however, as the economy faltered, the fund was used less because local communities did not have the funds to purchase sites or could not pledge repayment due to shrinking resources to operate their communities. Several other communities were unable to participate because their law departments still believed strongly that the purchase of contaminated land was too risky, despite the Voluntary Action Program.

The county reviewed the program and determined that most communities who participated in the program "flipped" the real estate. Many communities bought the brownfield property from the developer to make it eligible for funding and then transferred the property back to the developer. This served to increase legal costs of each project.

Another issue that became apparent was that many businesses were surrounded by vacant or underutilized industrial properties. When they needed to expand their business, they

looked to suburban areas due to the complexity and cost of adjacent properties. When they left, their sites often became new brownfields.

County staff reviewed these issues and developed new program parameters. Time was spent educating and advising the Board of County Commissioners and our other local partners and gathering support for new legislation changing the program. In May of 2004, the County added new program areas to the Brownfield Redevelopment Fund. The first area was to open the program to developers and business owners who are not PRP's. Instead of a subsidy applied upon completion of the clean-up, business owners and developers were offered "Forgivable Loans" at the same percentages as were available for local subsidies for municipalities and non-profits. A provision was also added to allow a forgivable loan up to $500,000 for companies expanding onto an adjacent site that was a brownfield to pay for remediation, demolition and other environmental costs. While fifteen (15) projects had been approved between 1998 and 2004, six (6) new projects were approved after the new legislation was approved. (See Exhibit A) News traveled fast through the community and staff is currently working on another sixteen (16) projects. These projects exceed current fund balances by $2.7 million. The need is great in the region.

From the experience of staff, we have developed an overall Brownfield Strategy for the County. (See Exhibit B) The county has determined that we need to follow three courses of action to be successful in Brownfield Remediation:

- Identify and Assess Sites

- Provide Funding for Remediation including subsidies and Forgivable Loans for projects with End Users
- Identify Key Brownfield Sites for Business Attraction and work with our partners to clean these speculative sites

The Board of County Commissioners approved $1 million for the Local Assets for New Development Program (LAND) working with a local Economic Development organization, Team NEO, to determine how to rank applicants. Team NEO has also committed to marketing the sites and to work with the county in attracting other funds for the clean-up.

THE COUNTY'S PROCESS TO BUILD PROGRAM CAPACITY

Cuyahoga County originally received a $350,000 Pilot Program from the USEPA. The funds were awarded to County Planning Commission. While the Planning Commission was instrumental in identifying the issues surrounding brownfields in our region and in bringing the partners together to plan for the implementation, they had no experience in managing a revolving loan fund. In 2002, the County Department of Development, who has managed three (3) revolving loan programs under the HUD Community Development Block Grant programs for nearly 30 years, took over the funding and placed it in a Brownfield Remediation project. The cleanup was completed and the funds were repaid. Cuyahoga County just recently became the only community in the nation to revolve the funds, close-out a pilot program grant and transition the funds into a new revolving loan fund under the new rules.

What is essential under capacity is that the county took initial steps to insure success of their Brownfield Redevelopment Fund. In 1997, in expectation of creating the fund, the Board of County Commissioners hired a Development Finance Analyst with a strong finance background to join the Economic Development Division staff. The County also contracted with outside legal staff with an expertise in Environmental issues. This team was able to conduct the underwriting and the preparation of legal documents to adequately protect county dollars and yet be able to deliver funding to the community.

As foundation funding was depleted for site assessments, the County applied for a USEPA Site assessment grant in 2003 and was awarded $200,000 for Hazardous Substances and $200,000 for Petroleum. County staff worked to design a program application, review process and assemble the review committee. A second Development Finance Analyst was hired who had both a background in environmental studies and economic development. A Request for Qualifications was issued to select six (6) environmental consultants to complete the Phase I and Phase II site assessments. The program was fully implemented in November 2004. To date, the Board of County Commissioners has approved six (6) grant awards and another six (6) have been recommended by the Review Committee. Proposed end uses range from the recreation of a wetland to housing to manufacturing and the twelve projects represent nearly 70 acres of brownfields in the community. Another thirteen (13) projects are in the application phase. Currently the program is advertised throughout the county and demand is high. There is a great need in the community for this program. Many of the projects could not even be contemplated without these funds. (See Exhibit C)

In 2004, the County reached out to two development partners, the City of Cleveland and the First Suburbs Development Consortium, to create the North Coast Brownfield Coalition. The idea was to capitalize on the County's brownfield expertise to apply for USEPA Revolving Loan Funds and utilize the County's abilities to oversee projects and manage loan funds to bring more funding to the region. Although the Coalition did not receive Revolving Loan Funds, the county did seek and receive a Supplemental USEPA Revolving Loan Fund Grant. Three (3) projects have been identified to receive these and the transitioned RLF funds. The projects should be under contract by year end 2005.

The county also applied for a Brownfield Economic Development Initiative (BEDI) Grant and corresponding HUD 108 funding in 2004 for the Tinkers Creek Commerce Park Project. The total project cost is over $30 million. The County is using $1 million in County Brownfield Redevelopment Funds, $850,000 in State of Ohio Infrastructure funds (a pass through from the Department of Transportation), $2 million in HUD BEDI, $4 million in HUD 108 funds, and $110,000 from USEPA RLF Programmatic funds (for Pollution Legal Liability Insurance) to demolish, remediate and create new infrastructure for the proposed commerce park. An end user was identified who will begin construction in 2005.

RESULTS OF THE COUNTY'S BROWNFIELD PROGRAM

The Cuyahoga County Brownfield Redevelopment Program has successfully provided funding to twenty-one (21) projects. While the Department of Development recognizes

that these sites reduce the risk to human health and the environment in every case, the program is viewed as an economic development tool for the region. As such, the County has measured the economic impact of the portfolio. The following statistics have been generated by the program:

- The County has leveraged $14.36 for every $1 expended under the program
- 1,436 jobs have been created
- With 7 projects completed, including 2 with partial tax abatement, the portfolio is currently generating $562,000 in new property taxes annually(the county receives roughly 18% with the balance going to schools and local governments)(See Exhibit E)
- Estimating only a conservative 20% of total costs going for construction materials, new sales tax to the county (the county receives 1% of sales tax) generated from the projects is over $330,000
- Using an average wage of $30,000 per new job created, new income taxes are currently $474,000 per year

The county's net expenditures to date (debt service due less principal and interest payments received) has been $6.9 million. Based on this level of investment, the county has received a return of 10.7% from its share of property taxes and sales taxes. Compared to the same amount of funding for typical Economic Development Loans at an of $35,000 per job, the return to the county is less than 5% based on interest paid, one time sales tax generation and the county's share of new taxes generated. The previous writedown of value on most brownfield properties leads to greater returns to the

community when the property is clean and value returns to the tax duplicate. This helps local communities and schools work towards balancing their budgets.

LESSONS LEARNED FOR A SUCCESSFUL BROWNFIELD PROGRAM

The County Brownfield Redevelopment Fund has achieved great success. The program shows quantifiable economic returns to the community as well as health and safety benefits.

The program's success can be attributed to the following:

- Strong support from elected officials to streamline the process
- Financial support for staff and operating expenses (All staff are required to take the National Development Council Economic Development Finance Training to gain a good understanding of underwriting criteria to complement their environmental expertise-cost $6,500 per person)
- Skills testing in he hiring process to seek candidates with a background in both environmental studies and finance
- Program flexibility to make changes as the brownfield market and economic conditions change in the region
- The ability to provide subsidies or forgivable loans to help reduce the costs to develop a brownfield versus a greenfield site
- Expert legal consultant available to staff as needed
- Strong partnerships with our funding agencies

- An excellent grant writing team created by linking the program with economic and community development staff who can provide expertise with demographic data, complicated proforma analysis and return on investment
- A team approach to reviewing projects and determining the best funding methods
- Technical support from the USEPA Region 5 Brownfield Team

FURTHER FEDERAL SUPPORT NEEDED

Cuyahoga County staff fully support the current bill regarding Brownfield Tax Credits, as long as the credits are available for all brownfield sites and not limited to areas of poverty. Brownfields clearly impact the inner ring suburbs as well as he larger urban metropolitan areas. As previously proposed (only communities with at least 1 census tract with poverty in excess of 20%), only eight (8) of fifty-nine (59) communities in Cuyahoga County would be eligible. The tax credits would make more funds available for the sites which have been very difficult to remediate due to the high cost of the remediation. However tax credits are only part fo the funding needed.

The county also believes here is a continued need for grant funds for brownfield projects. Simply said, a developer can make more money on a Greenfield project and will not take the extra time to receive a return on a Brownfield site unless there is an incentive. Developer's funds are tied up for a year or more during clean-up (the construction season in Northeast Ohio is short due to weather conditions) and many developers see this as a loss of opportunity to invest in other projects. More funds

need to be made available for both the USEPA Revolving Loan Fund and the HUD BEDI grants. Both have funded only a portion of applicants each year. The return on investment to the community indicates that investments in these government programs has a payoff to the local community, providing funds for education, local programming and creating jobs.

There is an obvious need for Administrative funds to be included in future grant funding. Clearly when only 17% of USEPA RLF funds are currently invested in projects, there is an implementation problem. While we support the creation of coalitions, there still remains an issue of communities being able to hire trained staff and to be able to provide ongoing training. The county currently is maintaining a successful program with 2.5 staff persons, funding a loan fund, site assessment grant program as well as administering USEPA Supplemental RLF funds and HUD BEDI and 108 grants. We would recommend some type of administrative funding for all brownfield programs to hire staff or consultants to complete projects.

We fully support a provision to increase the points assigned on all competitive grants (USEPA, HUD and any others) for capacity to specifically include numbers and dollar amounts of loans made, cleanups completed to VAP standards and end use projects completed on Brownfield sites; amount of staff dedicated to managing brownfield funds; creation of a coalition that pools resources; and also for local matching dollars. These factors are present in each and every successful program in the country.

Exhibit A: Cuyahoga County Brownfield Portfolio- Approved Projects

Exhibit B: Cuyahoga County Brownfield Strategy

Exhibit C: USEPA Site Assessment Projects Approved and In Process

Exhibit D: Cuyahoga County Brownfield Portfolio- Tax Analysis

STATEMENT OF CASEY STEPHENS

Mr. STEPHENS. Mr. Chairman and members of the subcommittee, my name is Casey Stephens. I am with the city of Toledo, the Brownfields Coordinator.

I would like to take this opportunity to thank the subcommittee and also to commend the U.S. EPA for all of their efforts over the past several years in brownfield redevelopment.

As you know, the city of Toledo has a long history of industrial development. And as you would expect, we have a significant number of brownfields. And while we've been very successful in cleaning up contaminated and industrial sites and getting them back into reuse, with examples such as the Owens Corning world headquarters and the DaimlerChrysler North Toledo assembly plant, we found that there are certain areas of the city that have been left behind. And those areas of the city are the central city area that are most impacted by brownfield locations located there.

Mayor Ford's goal of having clean, safe and beautiful neighbors goes hand and hand with the economic development and the brownfield cleanup in these central city areas. And as such, the city of Toledo has identified a given area of the city that we refer to as the brownfield impact area. That area was identified by using census data and by combining that with our brownfield inventory; it was also identified as an area of the city that was most impacted by the presence of brownfields.

Levels of poverty and unemployment in the brownfield impact area are greater than in any other parts of the city. Since 1970, Toledo has lost nearly 70,000 people from our population. And of that, over 65,000 people have migrated from the brownfield impact area. So as you can see, the impacted brownfield sites on the central city area is quite devastating.

Toledo's current strategy for redeveloping brownfields is two-prong. We are focusing on our riverfront properties, creating commercial and residential areas that offer sites that cannot be found in our neighboring suburbs. Our second part of our strategy is to focus on the brownfield impact area. And we're doing that in conjunction with the Toledo Public Schools' reconstruction program. They are spending nearly $800 million in redeveloping the schools throughout the city of Toledo. And we are focusing on their construction as a way to enhance brownfield development in residential areas of our brownfield impact area.

We feel this is a very sound strategy. However, our problem is not finding cleanup money. Our problem is attracting investments to invest into the central city area. So the city of Toledo supports anything that the Federal Government can do to help attract private investment into the central city areas.

Thank you for the opportunity to speak. And if you have any questions, I would be happy to answer them now.

[The prepared statement of Mr. Stephens follows:]

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STATEMENT OF T. CASEY STEPHENS
CITY OF TOLEDO
BROWNFIELD'S COORDINATOR
BEFORE THE SUBCOMMITTEE ON
FEDERALISM AND THE CENSUS
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

The Ohio Experience: What Can Be Done to Spur Brownfield Development in America's Heartland?

MAY 16, 2005

Mr. Chairman and members of the Subcommittee:

My name is Casey Stephens. I am the Brownfield's Coordinator for the City of Toledo. Thank you for the opportunity to discuss Toledo's experiences for dealing with Brownfields and specifically, how the federal government can encourage Brownfield redevelopment within those cities most impacted by abandoned and underutilized properties.

I would like to take this opportunity to commend the U.S. EPA for their forward thinking efforts to deal with the problem of abandoned and underutilized properties. EPA's ability to make assessment, cleanup and job training monies available directly to the impacted governmental entities publicized an ignored issue, encouraged interaction among stakeholders, fostered inter-agency cooperative efforts and spawned the birth of an entire brownfield industry.

Toledo has a long history of industrial development and as you would expect a significant number of brownfields. We came to the realization that our city must encourage brownfield redevelopment before the many abandoned and underutilized properties were ever referred to as "brownfields". The Toledo Brownfields Group began in the early 1990s as the Mayor's Environmental Advisory Board. The group is made up of individuals from government, community development corporations, environmental consulting companies, financial

institutions, developers, and property owners. A 1992 study commissioned by the Board showed a significant number of environmental issues were impeding property transactions in Toledo. The study revealed that 62% of the commercial/industrial real estate transactions in Toledo were encumbered by environmental issues. Over 25% of the property transactions conducted over the previous year were aborted due to environmental issues. The average value of aborted transactions was $355,000 and the average number of jobs lost due to these transactions was 20.55 per transaction. Subsequent studies and surveys have substantiated these findings.[1] This clearly demonstrates the apprehension of the private sector during that time to rebuild on brownfield properties.

Realizing this, the city with the assistance of Lucas County, Toledo-Lucas County Port Authority and the State of Ohio took an aggressive stance toward encouraging redevelopment of these abandoned/underutilized properties, including taking title to contaminated properties and initiating remediation. The commitment to maintain and expand the City's strong industrial base and improve the quality of life for all citizens while addressing a history of environmental problems is evident through City and private sector investments in brownfields of approximately $1.38 billion in the last four years. This resulted in a number of successful Brownfield redevelopments such as **Owens Corning World Headquarters** - Construction of Owens Corning's new world headquarters on former railroad terminal. Funding: $10 million City of Toledo CIP, loans, and tax increment financing; private investor; **Chrysler Assembly Plant** - The expansion of Jeep operations at its present Toledo location preserved approximately 4,000 jobs and created hundreds of additional support and construction-related jobs. Funding: $27.89 million federal grants and loans, including HUD 108; $30 million from State of Ohio grants and

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[1] Fournier, Keith and Dr. William Muraco, The University of Toledo Geography and Planning Department, *Reuse of Industrial and Commercial Property Survey.*

loans; $15.5 million City of Toledo CIP, loans, operating funds and tax increment financing; $2 million Lucas County; private investor. **State Correctional Facility** - New state prison with expected employment of 400 on site that was subject to open dumping and had several abandoned vehicles. Funding: $65 million from State of Ohio; $6.18 million CIP City of Toledo.

While the city has done a commendable job of redeveloping brownfields on project-by-project basis for commercial/industrial sites, we realized that we were missing the areas of the City most impacted by brownfields, the central city area. Historically, industrial sites were located within walking distance of the potential pool of workers in the pre-automobile days. These sites, now abandoned, or at best underutilized, are located in predominantly low-income neighborhoods and populated predominantly by minorities. One of the reasons these sites become run down is that the current owners believe the neighborhood property values may seem too low to justify any sort of investment in the site. And as the brownfield sites deteriorate, they bring down the surrounding property values, a classic *Catch 22*.

The vast majority of Toledo's brownfield sites are located in distressed, low income, inner city neighborhoods inhabited predominantly by minorities. The minority population, mostly African American and Hispanic, constitutes approximately 29% of the city's 313,619 population. As an older, industrial city, many of Toledo's early factories are surrounded by densely populated residential neighborhoods. Many of these sites have now devolved neighborhood brownfields with no real buffer between them and residences. Consequently, the brownfields are more than just eyesores and unproductive properties. They intrude into low-income family neighborhoods and project potential public health, nuisance and crime – related hazards to the residents of these neighborhoods, and in so doing, frustrate redevelopment. These identified areas have the highest unemployment and poverty rates in the City of Toledo. In many

instances, unmitigated brownfield sites frustrate significant community reinvestment and home ownership throughout extensive areas of Toledo. Among the results are decaying housing stock, suburban flight, and high unemployment. Recycling these brownfields furthers the basic tenet of environmental justice, which is identifying and addressing adverse environmental effects on minority and low-income populations in the City of Toledo. In so doing, we will improve the standard of living and quality of life of many disadvantaged Toledoans.

The City of Toledo has a solid base of successful industrial brownfield redevelopment projects and has acquired considerable experience and knowledge of this critical area of environmental and community planning. However, we have been less successful in redeveloping our neighborhoods impacted by brownfields. Mayor Jack Ford's goal of having safe, clean and beautiful neighborhoods goes hand in hand with economic development and brownfield site clean up. Understanding that contaminated sites in Toledo pose health and safety risks to inner city inhabitants, the City of Toledo's brownfield program identified the Brownfield Impact Area (BIA). The BIA is comprised of those areas of the Toledo that are most impacted by brownfields, a map of which is illustrated in Figure 1. Levels of poverty, and unemployment are much greater in the BIA than in other parts of the city. The City of Toledo's population is

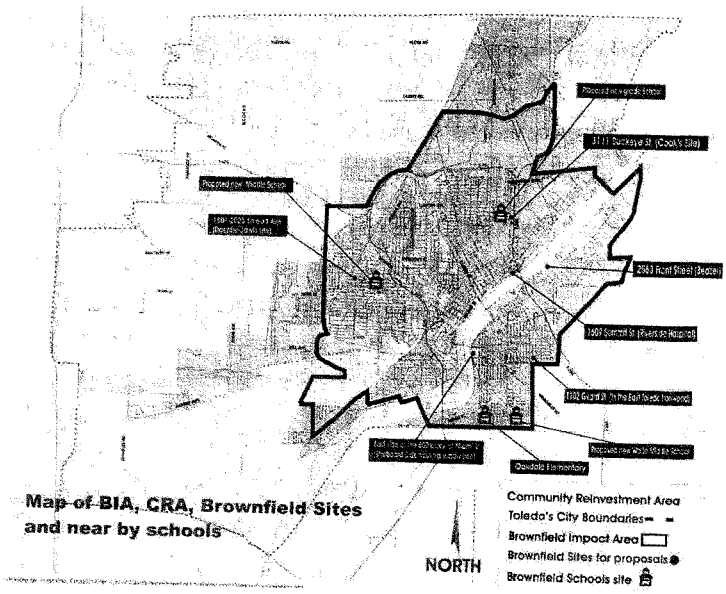


Figure 1: City of Toledo Brownfield Impact Area

313,619. Of that population, 105,565 or 33.6% live in the BIA. The BIA is home to over half of the City of Toledo's impoverished residents. Of the 105,565 people residing in the BIA, 30,693 (29%) live below the poverty level. The poverty rate for the City as a whole is 17.5%. In three census tracts within the BIA, over half of the population lives below the poverty level. According to the 2000 Census, the unemployment rate for the City of Toledo was 4.9%, and the unemployment rate within the BIA was 7.1%. The official unemployment rate in the City of Toledo in February 2005 was 8%, which translates into an unemployment rate of nearly 12% in

the BIA. In addition, whereas only 5.5% of all families city-wide receive public assistance, 10% of the families in the BIA receive assistance. Virtually the entire BIA is situated within Community Reinvestment Areas (CRAs) *and* an Enterprise Zone (EZ). The CRA and EZ classifications are the result of the economic hardship present in the target community. And we are not alone, many urban areas in the United States have aging, disadvantaged core areas very similar to Toledo's BIA.

Toledo's strategy for brownfield redevelopment has evolved into a two-pronged approach; first, we are focusing on revitalizing neighborhoods impacted by brownfields by capitalizing on a major improvement program being undertaken by the Toledo Public School System, this provides a unique opportunity to revitalize, and in some instances "reinvent," Toledo's central city neighborhoods as vital, vibrant, diverse urban communities in which people and businesses choose to not only remain, but also locate. Secondly, we are coordinating efforts along our formerly industrialized riverfront to offer residential and commercial sites that cannot be found in the adjacent suburbs. However sound our strategy is, more needs to be done to create incentives for developers to invest in the BIA. Developers and businesses have invested and redeveloped many desirable brownfield sites within Toledo, the "low-hanging fruit", as it were. But our problem is attracting investment into the areas most impacted by brownfield, especially in a weak market location. Toledo currently has 1200 clean vacant residential lots in the central city, given the difficulty of attracting investment into these areas you can understand our frustration at trying to cleanup and redevelop contaminated central city sites. While efforts by the U.S. EPA have spurred an entire Brownfield cleanup/redevelopment industry, it is still not enough. Toledo believes that additional incentives must be in place to stimulate central city investment in brownfield sites. These additional incentives should not be considered a subsidy

to urban areas by suburban and rural districts. The suburban fringe cannot prosper without a strong urban core. And, the failure to redevelop brownfields only leads to urban sprawl with its accompanying environmental and social problems.

While we believe that brownfields are the unintended consequences of federal environmental regulations, those who deal with these sites have come to realize that dealing with the contamination is not the problem. These sites are real estate/development problems with an environmental twist and not the opposite. The Federal Government has done much over the last fifty years to encourage urban sprawl. Subsidized construction of the highway system and new infrastructure, automobile consumerism and energy policies, all of which contribute to the flight of residents out of the core urban areas. Brownfield sites will not be truly addressed, until the Federal Government removes the disincentives to central city investment. It is time to create incentives that will allow cities to compete with their suburban neighbors. It is time to encourage cities to create neighborhoods where people choose stay but also choose to relocate to into by redeveloping brownfields based upon the concepts of smart growth and new urbanism.

Census data respecting the BIA clearly establishes that Toledo's central city cannot be revitalized unless integrated and innovative approaches for remediating and redeveloping brownfields in this low-income and socio-economically challenged community are conceived and effectively implemented. Toledo has found that accessing cleanup funds is not as much of an issue as encouraging investment in low-income neighborhoods where the residents don't have disposable income. Therefore, we support efforts to redevelop those central city neighborhoods most impacted by brownfields. As such the City of Toledo encourages any federal effort to assist in the redevelopment of brownfields in communities with census tracts in excess of 20%, such as the proposed tax credit bill sponsored by Chairman Turner last year. We also believe

that it does not go far enough, the incentives should not only include tax credits for demolition and remediation costs pursuant to an approved plan, but also include the costs of site characterization and costs associated with entering into a state voluntary cleanup program. Expanding upon that concept acquisition costs, and infrastructure costs akin to the Clean Ohio Fund could also be included in the tax credit program. Tax credits could also be expanded for investment, job creation and historic preservation within impacted census areas. Additional incentives to encourage the attraction of capital to the brownfield impact areas are also needed, such as direct loans, grants or changes in the Community Reinvestment Act or the Community Development Block Grant Programs. Changes are needed in the "finality" issue with respect to EPA's role in the site characterization and cleanup process. This will enhance the value of covenants not to sue and like documents from regulatory agencies.

The City of Toledo looks forward to working with this subcommittee and other communities to implement these strategies, to encourage brownfield redevelopment by reducing liability for owners and financial institutions and by creating incentives to encourage private sector economic development in our core urban areas.

Mr. TURNER. I want to thank all of you for taking your time to put together the testimony and for your statements here today. The Federalism and Census Subcommittee has been looking at the issue of brownfield redevelopment. Obviously, an area that I have a particular interest, having served as mayor for the city of Dayton, a city that has a significant number of brownfields and has been negatively impacted by its ability to redevelop those sites.

The focus this committee has taken is the relationship between the Federal Government and the local governments, and certainly brownfields being a federally created problem, it's a natural outlook that we would look at. What are some of the Federal responses, what are the Federal programs, grant moneys that's available, what's missing, what else do we need to be doing.

As part of our initial hearing on this topic, we had the GAO issue a report in looking at the available grant programs that are out there, revolving loan funds, EPA's Federal financial assistance. And they had some criticisms of the program and gave some advice and examples of how communities are accessing them. But they did go on to say that there was a greater need than the programs that are currently available can fill.

And it talked about the need for looking to how we can get additional resources to communities to address brownfield issues. And I know in the great examples that we've heard from our two mayors and the great work that is being done throughout Ohio, we have some great successes, but we also have high need. We have properties that we know that the environmental contamination, building demolition costs exceed the value of the property.

Without a financial incentive, these sites are going to be unattractive for people to locate their businesses and we're going to continue to eat up our greenfields and have broader and broader metro areas.

My question is that I would ask each of you to speak for a moment about the issue of the need and the resources that are available. Mr. Stephens, you were saying that you haven't had a problem finding cleanup money. But I know that for most communities, when they look at trying to redevelop land addressed to brownfields and make it business ready in a timely fashion so that when a business is interested in going into a spot so they'll have the land redeveloped and ready, that they have struggled in finding the available resources to address the brownfield cleanup.

So let's start with Mayor Sarosy, if you would talk about the issues of what you see as the need versus the available resources that are out there.

Mr. SAROSY. The need for Fairport and the surrounding communities in all of Lake County is the fact that property has been sitting there, 1,100 and some acres, with nothing happening on it and contaminated soil and so forth. It's going to mean a lot to our schools. It's going to mean a lot to the surrounding communities. It's going to be a regional project for all of the surrounding areas. Again, not seeing anything happen for many years, it's going to have an impact on everybody.

Mr. TURNER. OK.

Mr. POCEK. Very similar situation in city of Bedford to the Village of Fairport Harbor, you have all those much smaller sites, 50-

acre sites, happens to be the most populated areas of northeast Ohio. This site is 1½ minutes from 271 and the population growth is going southeast, and it's just an excellent place to redevelop. But it has sat there for 20 years.

And now it's going to produce at least 500 jobs, be a regional development, and bring more money to the schools. Like I said, we got approximately a couple hundred thousand dollars in income tax from Brush Wellman on real estate tax on this from Brush Wellman in 2004. We're going to get $28 million projected in 2008. So that's a tremendous boom not only to the city, but to the school district and the region as a whole, because it is a regional development, too.

Mr. TURNER. Ms. Nichols.

Ms. NICHOLS. In 1996 it was estimated that there were 4,623 acres of brownfields in Cuyahoga County. And what we've done with our program is since 1998, we've made many changes, as we've seen the market change. And I think one of the most important things that we learned, early on, we were giving money only to municipalities and non-profits who would buy sites to redevelop them. As our economy worsened and cities were hard hit and did not have funds available to go out and buy brownfields to redevelop them, we changed our program to give funding directly to developers and to offer them a forgivable loan.

Once that happened, we saw a huge increase. We did 21 projects. We did six from May 2004 to December 31, 2004, after starting the program in 1998. And now we have 16 projects that we're currently looking at. All are private developers who are stepping up to the plate.

And what's most important is that we have a subsidy available to them. Without that subsidy, these projects would not go forward. So we see a huge demand and a huge need in our community. And the commissioners have stepped up to the plate and are provided funding. And we're looking for partners to go forward with us.

Mr. TURNER. Mr. Stephens.

Mr. STEPHENS. As I said, I don't want to lessen the impact of cleanup funds, but we have had the opportunity or we have been fortunate enough to have been able to access cleanup funds for a number of projects. Our biggest issue, and I have to reiterate it, is the fact that we have 1,200 vacant residential lots in our brownfield impact area. Our largest problem in the city of Toledo is attracting private investment to the central city area.

Developers have been more than willing to grab for the lower hanging food, as it were. And we've had much success in working with our industrial partners within the city of Toledo to clean up sites and to redevelop those sites. But our biggest focus now is out in those central city areas. And quite frankly, we'd like to see the line in the bill about the areas of poverty levels greater than 20 percent, because we think that will focus in on areas in the central city.

And it's the city of Toledo's point or the city of Toledo's stance that you can't have a strong suburban area without a strong core area. And we feel that anything we can do to attract investment, private investment, into the central city, into the core area will go a long way in strengthening our whole regional economy.

Mr. TURNER. Ms. Yersavich.

Ms. YERSAVICH. Thank you, Mr. Chairman, and the rest of the representatives.

Yes, I would say, I would have to agree with Mr. Stephens. I think a lot of what we're seeing where the need is now is some of the higher hanging fruit, some of the more complicated sites that maybe need a little push. I think helping out with private developers as well as public is very, very helpful and is a direct need. And the Voluntary Action Program, what a volunteer receives, they receive a tax abatement on real property taxes for 10 years for the increase in the value of the property as a result of the cleanup, but also any improvements that are on it, and that's been very popular. And that is provided to both the private and the public alike.

I would also say we see along with big cities is some of our smaller towns, particularly those that need a little more education in brownfields, because they all do have issues of, as the mayor said, you know, one area in a particular community that may have lost a lot of jobs, causing blight, causing problems, and working on helping them do grants, and helping them get the funding and the incentives that they need to get things started in their communities. Thank you.

Mr. TURNER. We've been joined by Stephanie Tubbs Jones, who is the Congresswoman for this area, also a fellow alumni of Case Western Reserve.

Ms. JONES OF OHIO. Double alumni.

Mr. TURNER. I had the honor to follow in Stephanie Tubbs Jones' tracks and give a commencement speech for our law school, of which we're both an alumni from.

Stephanie is a co-author with me of the Brownfield Tax Credit Act, and she's been incredibly supportive of the issue of trying to make certain we have a Federal response and resources to assist communities in redevelopment and addressing issues of brownfields.

I appreciate her joining us so that we can have this hearing in Cleveland and get the additional information that you bring to us, because we look to this committee trying to get data and information on ways to address the brownfield issue. We, of course, have the various Members of the committee and their local experience, but being able to come here and to get your experience and your testimony really helps us fashion some solutions.

With that, I would like to recognize Ms. Stephanie Tubbs Jones.

Mrs. JONES OF OHIO. Thank you, Mr. Chairman. I am so pleased that you would choose the 11th Congressional District of Ohio to host this wonderful hearing in and to give the people in my congressional district an opportunity to speak out on the issue.

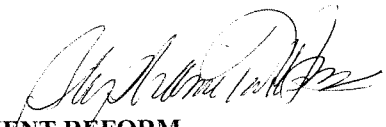
I must apologize for being late. When you're in your congressional district with a hearing, there's 7,000 other things that draw people to you. And then you know that the recent announcement with the closing of DFAS, there was a meeting this morning of all the staff of DFAS to talk about that issue. And myself and my colleague, Congressman Dennis Kucinich, were at that hearing. I'm expecting that he may hold down the fort there while I'm holding down the fort here, so that is the reason that I'm late.

But the issue of brownfields is so very, very important for the redevelopment of our area. I have an opening statement that I would ask to be put into the record, with regard to a number of brownfields and the things that Cuyahoga County and others like Mayor Pocek have been able to do in their community.

I can think of a couple other sites where we've taken brownfields and had an opportunity. For example, I'm hoping this is going to happen soon that we're going to have a ground breaking for the Job Corps, which is that old White Motors site, and that we're going to have a ground breaking that we can get some issues for the Juvenile Court Detention Center on brownfields.

But it is just a great opportunity for us to get into this issue as it impacts—I would like to welcome the city of Toledo, Fairport Harbor, OH EPA. I used to work at the sewer district, so it's just good. Tracey, as well. Let me ask Tracey. Based on your testimony, Ms. Nichols, excuse me, let me be more formal for the record, a huge collection of dollars is a result of the brownfield work that Cuyahoga County does. Do you take those funds and reinvest them in brownfield redevelopment? What happens?

[The prepared statement of Hon. Stephanie Tubbs Jones follows:]



HOUSE GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

Oversight Field Hearing

"The Ohio Experience: What Can Be Done to Spur Brownfield Redevelopment in America's Heartland?"

OPENING STATEMENT:

Thank you, Chairman Turner, for holding this important hearing and bringing your Subcommittee to my congressional district and alma mater, Case Western Reserve University. I also want to thank the panelists for taking the time to come before us today and discussing an economic issue critical to our region: brownfields.

As unemployment continues to be a major problem in Cleveland and the State of Ohio *[national unemployment rate: 5.2; Ohio: 6.3; Cleveland: 8.4]* and hardworking Ohioans keep losing their jobs, we need to continue to look for ways to spur economic growth and bring jobs back to our region. That is why economic development and the creation of good jobs in Ohio is a top legislative priority of mine as the Representative for the Eleventh Congressional District of Ohio.

Brownfields, however, are an obstacle to economic development in Ohio.

Brownfields, simply put, are abandoned properties that are contaminated with hazardous substances. The contamination factor increases development costs substantially, making it more difficult to convert a brownfield into productive real estate.

Brownfields are a major problem in our region because they are prevalent in areas that were traditional hotbeds for the manufacturing industry. The Government Accountability Office estimates that in Ohio there are 4,000 to 6,000 brownfield sites. According to a1996 study by the Cleveland State University Great Lakes Environmental Finance Center, there are an estimated **4,623 acres of brownfields in Cuyahoga County. A majority of that land is located in the City of Cleveland and its surrounding first-ring suburbs. Cleveland, alone, has approximately 350 brownfields and between 1,000-2,000 condemned structures.**

Clearly, brownfields are a major hurdle in the road to bring Cleveland and Ohio back to economic health. These are unused properties that can serve as businesses, homes, education facilities -- the possibilities are endless. A brownfield today can be the economic engine for a city tomorrow. That translates into jobs, tax dollars, better schools.

Last Congress, I joined Congressman Turner in sponsoring H.R. 4480, the *Brownfields Revitalization Act of 2004*. The bill provided a tax credit for up to fifty-percent of the demolition and remediation costs incurred in cleaning up brownfields. I look forward to discussing this and other legislative solutions to

developing brownfields and converting them into useful properties.

I thank the Congressmen present and the panelists for taking part in this hearing. I look forward to staying in touch with all of you after today and tackling this and other important economic development matters in order to bring Cleveland and Ohio back to economic prosperity.

Ms. NICHOLS. Well, Congresswoman, our funding for the brownfields program is from a bond, so part of the money that we do receive back is to pay the bond. That was our only option at the time; to be able to fund this program is to float a bond through the county commissioners.

However, we have seen large amounts of tax increases that do go back into the community. As I said, right now on six completed projects, there is $562,000 in new annual taxes which benefit the local communities, the schools and the county. So we're very happy to see those types of amounts.

We do have a small amount of revolving loan funds. We are very proud of the fact that Cuyahoga County is the first entity in the Nation to revolve the initial pilot money and convert the new brownfield revolving loan fund under the U.S. EPA. So we're very happy about that and we now have those moneys available with some additional supplemental funding.

Those will revolve. We have set up a revolving loan fund. And just like our economic development program where we have a long view in our office to cater revolving loan funds for future benefits, we will do that with the U.S. EPA money.

Mrs. JONES OF OHIO. Mayor Pocek, good morning.

Mr. POCEK. Good morning.

Mrs. JONES OF OHIO. I heard the end of your testimony with regard to Brush Wellman. Are there other projects in your city that you have been using or working on brownfields redevelopment?

Mr. POCEK. No, that's the first one. That's the only real brownfield we have.

Mrs. JONES OF OHIO. What about you, Mayor of Fairport Harbor.

Mr. SAROSY. This is the first time for us, also. We have 1,100 acres sitting east of us where nothing is happening and the impact it's going to have, again, I mentioned earlier not just to the region, but to everybody, schools really close to me, and safety forces were all hurting in our surrounding areas or communities for getting some moneys coming in.

What Todd Davis has meant to us, the vision is just unreal. I mean, everybody, I mean the money will flow in after we go.

Mrs. JONES OF OHIO. Yersavich.

Ms. YERSAVICH. Yes.

Mrs. JONES OF OHIO. Ms. Yersavich, have you found any impact of brownfields on water redevelopment projects in any communities.

Ms. YERSAVICH. We are seeing a lot more of those. I think first, when the program first started our voluntary cleanup program, we didn't see as much because it is a difficult type of cleanup to deal with because you're usually looking at not only the lands, but the waters and who caused what and that sort of thing.

But I think as the program has matured and with the advent of the Clean Ohio Fund, putting more money into it along with the Federal grant, we're seeing a lot more waterway cleanup, and things like Diamond Shamrock.

Mrs. JONES OF OHIO. In case I didn't do this, welcome, Congressman LaTourette, to the 11th Congressional District.

Mr. LATOURETTE. They checked my credentials when I crossed the border.

Mrs. JONES OF OHIO. I'm going to cutoff so we can go on to the next thing. In a yes or no answer, you all are real exited about this legislation. Mr. Dufficy.

Mr. DUFFICY. I've been doing this for about as long as anybody in Federal Government and what brownfields need is as many tools in the toolbox as you can possibly get. The issue at hand is largely real estate transactions. That's really what a brownfield is. And anything that can impact whether a real estate transaction can go forward is what we really need.

The issue is whether you want to market. I think what Tracey and what Stacy have said, if you have the market to take the public sector resources that are out there, a project is going to go forward. We don't have to market—the public sector money really has to work an awful lot harder and often isn't substantial enough to make a project happen on it's own.

Mrs. JONES OF OHIO. Mr. Stephens, anything you want to add before I cutoff my questioning.

Mr. STEPHENS. Well, I just want to say that, yes, the city of Toledo is in support of the legislation. And as I said earlier, anything that the Federal Government can do to encourage investment in our brownfield impact areas would be most welcomed. Thank you.

Mrs. JONES OF OHIO. I'm sorry, Mayor. Yes.

Mr. SAROSY. I just had something, when you mentioned the lakefront——

Mrs. JONES OF OHIO. I thought about you, but then——

Mr. SAROSY. In touching on that, we have a costal renovation plan going on right now in Lake County and it's headed up by Harry Ellen which is like 23 acres. And, again, this Lakeview Bluff property is going to have a major impact on all of Lake County. We have a lot of erosion, it's going to help us stop the erosion that we're having. So for that 23 miles that we have going along our shoreline, for our whole county, it's going to have a major, major impact.

Mrs. JONES OF OHIO. I used to go to Fairport Harbor Beach when I was a little girl two or three times in the summertime. I haven't been in a while. I'll have to call you when I'm coming.

Mr. POCEK. I just want to add that the very fact is that Bedford is totally landlocked, totally developed, and this is the last piece that we had. With increasing burdens on the city, we have to come up with other revenue sources, and this was a Godsend to us.

And the fact that BEDI Grant, the way it was structured and the way we applied, we applied with 100 plus some communities across the Nation. We were awarded, you know, we were in competition with the city of Akron, we also won with the city of Sacramento, CA. So the way it was structured was really fair. And it gave us an opportunity to compete. And if it's not broke, don't fix it.

Mrs. JONES OF OHIO. All I can say, if Brush Wellman had won that, we would have probably fallen down. We worked very hard.

Mr. POCEK. We have some champions that we have in this room who I want to thank publicly.

Mr. LATOURETTE. Thank you very much, Mr. Chairman and Congresswoman Tubbs Jones. It's a pleasure to be in the public and I hope to welcome you out to Fairport Harbor sometime. The mayor has done a great job in cooperation with the MetroParks. That real-

ly is the key to this Lakeview Bluffs projects is partnerships and everybody pulling in the same direction.

That's why I asked, Mayor Sarosy, in the article I referred to in yesterday's News Harold, the soup pond that they covered with the clay cap, I thought I heard in the article they actually planted grapes on that site.

Mr. SAROSY. Yes. As a matter of fact, the soil is one of the top of the State. We had Ohio State come in and work on the vineyards there for us. And the soil there is just excellent for the vineyards.

Mr. LATOURETTE. And the project, and I know Mr. Davis will talk about it, but it really is going to be an exciting mixed use. You're going to have residential properties, you're going to have a golf course, you're going to have some businesses, you're going to have some retail. And I think that gets to, and I want to talk to Mr. Stephens in just a second about where the 70,000 people went, because that is a Browns game, and maybe we can talk about that, but one of the issues that's going on in Lakeview Bluffs that doesn't have so much to do with the financing and the talking about today, is the level that we reach in cleanup.

And I hear from some of my friends on the Fairport project, I hear some of my friends on the Ashtabula Harbor project that has been wildly successful. Hopefully we'll finally be able to dig some dirt out of the harbor after many, many years.

And can you just, Mr. Dufficy, start with you, I would just tell you that I think you're in the right office being in Region 5, because I think the last guy that had it is the President of Lithuania. So I think it's a good path you're on here.

Can you talk to us just a little bit as well about this. People complain that three things hold us back. Money is one that we're talking about today. Two is the liability that's attached if you make a loan on the property or develop the property, if you own a brownfield. And then three is the level of cleanup that's required before we can move forward with additional uses.

Can you just talk to us about how you feel about that debate, where we are today. Are we better off today? Are we incentivizing people, beside giving them money?

Mr. DUFFICY. First off, I'm just a brownfield guy.

We're in a much better situation today than we were. From a cleanup standpoint, I think that the secret in a lot of the Federal programs, especially the U.S. EPA, has been pulling out of the direct oversight and allowing programs like Amy's corrective action programs to go forward and really define within the communities at hand how clean is clean.

I say just about every cleanup you see in a brownfield scenario right now is happening because we know what the next use is going to be. Taking a cleanup out of context is cleanup for cleanup, and no one can afford to do that. So if the cleanup is focused on exactly what the next use can be, it allows the government to do what it can do best, ensure public health, among other things.

And also, when you have put in perspective, you know, what kind of Constitutional controls can be put in place, be able to track things that are left behind. But we're in a much, much better situation now.

Mr. LATOURETTE. Can I ask you this about the revolving loan fund, because I think those are small loans, are they not, like a million dollars, not millions of dollars.

Mr. DUFFICY. Right.

Mr. LATOURETTE. Go on to the Ashtabula situation. I don't know what Lakeview Bluffs is going to cost. Just the Federal kick-in on Ashtabula Harbor is $40 million. So if we had to do a million at a time, we would all be dead and our grandchildren would be dealing with the problem.

Would it help you if the size of those revolving loan fund grants, if we said, you know what, this year we're going to take care of Cleveland, so put all our money in Cleveland, then go to Toledo, rather than sort of dribble it out at a million dollars a plan. Would that be more helpful?

Mr. DUFFICY. More money is always going to be helpful. Again, right now all the public sector programs that are out there are really focused on trying to find as much public sector resource really as possible. Either going to be a finance situation, a transaction that can take that extra debt on, you know, loan scenario.

If you're talking about a loan in a scenario such as a community that's landlocked, this is the only thing we've got and they've got to do up with the wherewithal to do this entire development on their own, you're not really looking at a loan which is really going to benefit anybody. Because the loan has to find other money to really work well with. And in that scenario, a grant or some mechanism would be a lot better. The loan mechanism works when you have a transaction that can take on extra debt.

Mrs. JONES OF OHIO. Ms. Yersavich, my friend in the park communities thinks the Clean Ohio is the greatest thing since sliced bread, so I really want to thank you and the administrators and Senator Voinovich for putting it together, because you're really doing good work.

Mr. Stephens, they tell me I've got to get a second round. The 70,000 people, where did they go?

Mr. STEPHENS. Well, as people with the economic ability to flee the city left for our suburbs, those left in the brownfield impact area, again, migrated out to the neighbors with higher economic values, better schools, that type of area.

So we've seen a series of migrations, basically the, quote unquote, white flight out of the city into our suburbs. And then the movement of those in the central city, you know, migrating out toward the fringes of the city.

Mr. LATOURETTE. I think that's not an uncommon experience. What was the name of that project on the river, what was that development called, the River Walk or the Riverside?

Mr. STEPHENS. The marina district?

Mr. LATOURETTE. You had hotels and floating boats.

Mr. STEPHENS. Portside.

Mr. LATOURETTE. Portside. My sense is, and I know there's a press conference going on in Cleveland about the renovation of the Flats and Stephanie talked about the DFAS problems and NASA Glenn.

One of the things that impressed me was when President Hunter was talking about this program they have here; if you buy a house

in the city of Cleveland, good things happen to you as an employee of Case Western University. I think not only do you have to redevelop brownfields, people have to have stuff to do. And I'm sure you know as a city planner, and I know Ms. Nichols does, that you just can't have factories anymore, you have to have, like Mayor Sarosy said, golf courses and shops and places for people to go.

So I really hope, Mr. Chairman, as we move forward, you move forward in your leadership and so forth on this brownfield issue, that our city planning take a look at stuff to do in Cleveland. And not only to get people to come back downtown and work, but they should live here and play here, and not come down every other Sunday for a Browns game or 73 times a year for an Indians game.

So thank you for your courtesy.

Mrs. JONES OF OHIO. If I could just add something, Mr. Chairman. I've had a meeting, a small business committee hearing the other day and then I was at a banking committee hearing on HUD, all outside of my jurisdiction. But it just seemed to me what would make a lot of sense would be for HUD and SBA to have a relationship where they're developing housing and business, you know, that would be part and parcel of the development of communities, where they would be able to do that more such that we could get to the very issue that you're talking about of having jobs, having housing and something to do.

Mr. TURNER. Mr. Pocek.

Mr. POCEK. Mr. Chairman, just what both Congressman LaTourette and Congresswoman Jones said, if you look at the current trend in architecture and in development, you look at Crocker Park, you look at the Brunswick Town Center. They are taking and doing multiple uses. And they're going to build residential, commercial. And this is where ideally what they're trying to do in the flats area is the same thing. And this is, I think, the trend.

And if you could plug in, like Congresswoman Jones said, both HUD and add small banking industry together, this would make a redevelopment of the entire city. Because you have what is the mixed use. The city itself is basically a mixed use. And it makes most sense. The best kind of communities have a diversified mixed-use community.

Mr. TURNER. Thank you. I want to thank you for your testimony and for your time that you're providing to us. As the committee looks to the issue of the Federal response in relationship, your testimony of your success and what your communities are doing will be very helpful.

With respect to the bill that provides the tax credits that all three members who are here are cosponsors of, your testimony is also very helpful as we look at how that program would be structured. The bill, House bill 4480 is a billion dollar annual tax credit program for environmental remediation and building demolition on brownfield sites.

As we move forward to try to get support for this bill, hearing the ways in which brownfields have been addressed in communities, the programs that are currently out there and their success, helps provide some of the justification for the bill itself, because we can see that when funding is available, that when communities are

able to address brownfield sites, that they do have successful developments in their community.

The bill has been endorsed by every major mayor of every major city in Ohio. I certainly would encourage both of the two mayors here to lend their support for the legislation also. And it has been endorsed by the U.S. Conference of Mayors, the Industrial Parks Association, the Shopping Centers Association. And your information and testimony will help us as we move forward.

So I want to thank you and I want to give you one opportunity, if there's anything that you would like to put on the record, if there's something that you heard someone else say that you want to add a comment to. Anybody?

Ms. NICHOLS. I just want to also mention that the county has reached out to our partners in the city of Cleveland and the First Suburbs Coalition and we have created the Northcoast Brownfield Coalition. And one of the things that was in the GAO report was the creation of coalitions to kind of consolidate resources in regards to staffing and legal services, etc.

And we believe in this area that is another important area that we need to investigate and to have tied more to U.S. EPA funding and local availability, as we believe those areas can truly get the money out and spend it in a timely basis. Thank you.

Mr. TURNER. Any other comments? If not, we'll take a 5-minute recess as we go to our second panel.

[Recess.]

Mr. TURNER. Calling the meeting back to order. I want to thank all of our panelists on the second panel for coming and taking time out of their busy schedules to share with us their testimony on the important issues of brownfield redevelopment.

On panel two we have Alex Machaskee, president and publisher of the Plain Dealer. We have Todd Davis, chief executive officer of Hemisphere Development LLC. We have Thomas Stone, executive director of Mt. Pleasant NOW Development Corp. We have Barry Franz, principal engineer, Civil & Environmental Consultants. Craig Kasper, chief executive officer, Hull & Associates.

And each of you, I know, will be telling us your experience and backgrounds and efforts in looking at the brownfield issues.

And we'll start with Mr. Machaskee.

STATEMENTS OF ALEX MACHASKEE, PRESIDENT AND PUBLISHER, THE PLAIN DEALER; TODD DAVIS, CEO, HEMISPHERE DEVELOPMENT, LLC; THOMAS STONE, EXECUTIVE DIRECTOR, MT. PLEASANT NOW DEVELOPMENT CORP.; BARRY FRANZ, PRINCIPAL ENGINEER, CIVIL & ENVIRONMENTAL CONSULTANTS, INC.; CRAIG KASPER, CEO, HULL & ASSOCIATES, INC.; AND KEVIN O'BRIEN, EXECUTIVE DIRECTOR, GREAT LAKES ENVIRONMENTAL FINANCE CENTER, CLEVELAND STATE UNIVERSITY, MAXINE GOODMAN LEVIN COLLEGE OF URBAN AFFAIRS

STATEMENT OF ALEX MACHASKEE

Mr. MACHASKEE. Good morning, Mr. Chairman. Good morning, Mr. Chairman and members of the subcommittee. My name is Alex Machaskee and I'm president and publisher of the Plain Dealer

Publishing Co. I represent Ohio's largest newspaper with readership of over 1.1 million people daily. The Plain Dealer owns and operates a 245,000-square-foot office building in Downtown Cleveland, OH and a 600,000-square-foot printing and distribution facility in Brooklyn, OH.

I am here today not as an expert on brownfield, but as a concerned stakeholder in the city of Cleveland who has a vested interest in the redevelopment activity of brownfield sites within the city. I will also discuss the reasons why the Plain Dealer was unable to build our $200 million printing and distribution facility in the city of Cleveland, OH.

Back in the late 1980's we at the Plain Dealer made the decision to build a state-of-the-art production and distribution facility that would enable us to enhance our printing capabilities and more efficiently and cost effectively distribute our product. We had been on the Cleveland landscape for almost 150 years, so we naturally wanted to invest in Cleveland's growth by building our new facility within the city limits.

At that time, we had identified many sites in northeast Ohio that were large enough to accommodate our needs and met other specific criteria, such as proximity to our production base and access to freeways. Several of these sites were located in the city of Cleveland.

As it was our preference to build within the city, we further investigated the available sites in Cleveland. We were not able to locate one parcel of greenfield property within the city of Cleveland that would accommodate our needs. The existing brownfield sites within the city at that time caused us concern because of the uncertainty involved in the purchase of this type of property. For example, if the Phase I environmental impact studies shows that remediation would cost us between $6 to $7 million, one might figure that into the total cost of the new building. However, the uncertainty comes in once you start the excavation and site preparation and discover additional problems in the soil. It can create exorbitant challenges as to how and where to move the contaminated materials. Timing and, of course, the budget for the project are key factors, and we were apprehensive about potential legal entanglements that could elongate the development and certainly add to the total monetary expenditure.

Although, our objective was to invest in the economic development of the city of Cleveland, in 1994 we completed our $200 million production and distribution facility on 84 acres in Brooklyn, OH, approximately 10 miles from our downtown location. Approximately 450 jobs and the associated tax dollars were moved out of the city of Cleveland and into Brooklyn, where they remain today. Not only were we unable to contribute to the city of Cleveland's economic revitalization, we increased the complexity of our own operation by operating out of two facilities in different cities. Although, we have fine-tuned our processes since then, the situation has presented its challenges.

Since we felt strongly about having a presence in the heart of Cleveland, when we made the decision to build our new office building, we tore down our existing structure and built on the same

site. And even though we had additional land on which to build in Brooklyn, we felt a commitment to the city of Cleveland.

Our new building represents a $38 million investment in the city of Cleveland. Our business is dependent upon the strength of our core city, Cleveland, which I point out to you ranks No. 1 nationally in poverty. Not a very good thing to have in our area. We cannot move north, south, east or west. We are here to stay and the economic revitalization of our city is crucial to us.

Incentives for brownfield redevelopment projects provide an excellent means for encouraging investment in the city of Cleveland and for cities across the country.

I want to thank you, Mr. Chairman and members of the committee, for allowing me the opportunity to appear before you today.

[The prepared statement of Mr. Machaskee follows:]

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Statement of Alex Machaskee
President and Publisher
The Plain Dealer Publishing Co.
Before the Subcommittee on
Federalism and the Census
Committee on Government Reform
United States House of Representatives
"The Ohio Experience: What Can Be Done to Spur Brownfield Development in America's Heartland?"
May 16, 2005

Good morning, Mr. Chairman, and members of the Subcommittee. My name is Alex Machaskee. I am the President and Publisher of The Plain Dealer Publishing Co. I represent Ohio's largest newspaper, with readership of over 1.1 million people daily. The Plain Dealer owns and operates a 245,000 square foot office building in downtown Cleveland, Ohio and a 600,000 square foot printing and distribution facility in Brooklyn, Ohio.

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I want to thank the Chairman and the members of the Committee for allowing me the opportunity to appear before you today.

Mr. TURNER. Mr. Davis.

STATEMENT OF TODD S. DAVIS

Mr. DAVIS. Good morning, Mr. Chairman and distinguished members of the committee. My name is Todd Davis. I'm CEO of Hemisphere Development, a nationally recognized brownfield redevelopment firm based in Cleveland, OH.

As a matter of background, I wrote the American Bar Association's book on brownfield redevelopment. And I also sat on a number of national committees on brownfield redevelopment, including the Board of Directors for the National Brownfield Association.

Hemisphere is actively developing almost 1,300 acres of brownfield properties in Ohio ranging in size from 1.25 acres, which is very close to the Case Western Reserve Campus that we see here this morning, to 1,100 acres, as we heard this morning also, in Lake County, OH. Our Lakeview Bluffs project in Lake County has over 1.2 miles of continuous shoreline and 2.2 miles of scenic Grand River.

These projects undoubtedly represent the most challenging and complex brownfield redevelopment projects, not only in Ohio, but throughout the country. And just to put what we do into a little bit of context and perspective, brownfield developers are sometimes perceived like modern day gun fires, riding into town, wearing a white hat, providing the intellectual muscle, creativity and capital to tackle a community's brownfield needs. So in trying to keep with that western motif, I'll quickly summarize the State of Ohio's brownfield challenges into three categories; the good, the bad and the ugly.

First the good. Fortunately for Ohio, we have two of the Nation's leading programs to address brownfields; the Ohio Voluntary Action Program on the regulatory side and the Clean Ohio Revitalization Fund on the funding side. And these programs undoubtedly represent the catalyst of brownfield redevelopment in the State of Ohio.

Next, the bad. In part, due to the way the regulatory process is implemented, at least from a developer's perspective, the deals are still very difficult and it takes way too long to get them done. In many cases, Ohio brownfield deals are simply economically unviable without significant subsidy. Unfortunately, there's currently no raw market-based incentive to facilitate brownfield transactions.

Finally, the ugly, which from my perspective as a brownfield developer is the thought of brownfield redevelopment in Ohio without significant subsidy. So therefore, Congressman Turner, I applaud your effort in coming up with a creative brownfield tax credit strategy, which from my perspective is the only way to get a meaningful shift of capital from a private perspective into brownfield redevelopment, not only in Ohio, but throughout the country. Thank you.

[The prepared statement of Mr. Davis follows:]

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The Ohio Experience:

What Can Be Done to Spur Brownfield Development
in America's Heartland

Testimony of:

Todd S. Davis, Esq.
Chief Executive Officer
Hemisphere Development LLC

hemisphere

Before The
House Government Reform Subcommittee
on Federalism and the Census

May 16, 2005
Cleveland, OH

Hemisphere · 25825 Science Park Drive · Suite 265 · Cleveland · Ohio · 44122
www.hemispheredev.com

THE OHIO EXPERIENCE: WHAT CAN BE DONE TO SPUR BROWNFIELD DEVELOPMENT IN AMERICA'S HEARTLAND

Testimony of:
Todd S. Davis, Esq.
Chief Executive Officer
Hemisphere Development LLC

Imagine that you are standing at the locked gates of an abandoned industrial site. What do you see? Economic opportunity? Or environmental contamination and financial disaster? For most, interpretation is a matter of perspective.

If you own this property—a site where manufacturing plants for decades operated unencumbered by environmental regulations—you may have to contend with "smoking guns" or "dead bodies" buried deep beneath the surface. Corporate real estate owners typically are advised by their lawyers to keep property like this under wraps, a permanent fixture in their real estate portfolios. Individual property owners take these white elephants to the grave, leaving their children to devise a solution for their final disposition.

If you are a regulator, you may view this site as a threat to human health, safety, and the environment. To you, it is a potential battleground for protracted litigation involving hordes of lawyers and technical consultants. Sites like this are exactly what motivated you to become a regulator—to save future generations from years of corporate abuse.

Are you a lender? Then you hope you weren't responsible for recommending the loan on this property. If you are the actual loan officer, you pray there was enough cash flow for a long enough period of time to pay off the note. Confronting another work-out, or worse yet, foreclosure, on a site plagued by environmental issues would do little to further your career path.

To the member of an environmental interest group, this property represents yet another example of why we need to tighten, rather than relax, environmental regulations. Who knows what environmental nightmare lurks behind those gates? Without vigilance, corporate America will continue to abuse the environment. The individual or corporation that owned this plant during its heyday probably racked up millions of dollars in profits—the former owners should be held responsible for cleaning up the mess, no matter what the cost.

If you are a neighboring homeowner, you may look at an abandoned industrial lot and reminisce about how your parent worked at that plant for thirty years. You recall the site as it was then, a thriving enterprise that supported your family and your friends' families. Or you may see it from an entirely different point of view. Today, it may look more like a potential hazard, a vacant lot where your children might encounter harm should they wander there to play.

But what if you are the mayor of the community in which that formerly productive plant has sat idle for years? Instead of problems, you may see opportunity—the opportunity to attract new business, create hundreds of new jobs, and add millions of dollars to the city's tax coffers. To you, this property embodies continuing economic development, not mere historical significance.

And finally, suppose you are a developer. Perhaps you also can see economic opportunity, but through a different lens. You believe the property could have potential, provided you could:

1. convince the corporate property owners that you can address and eliminate their environmental liabilities;
2. work your way through the maze of federal, state, and local laws and regulations governing potentially contaminated properties;
3. see eye-to-eye with the mayor's office;
4. assure regulators that the site is not a toxic time bomb;
5. appease skeptical citizens groups; and
6. prove beyond the shadow of a doubt to your lender that it is worth taking the risk to finance this project.

If you could accomplish all the above, the only remaining challenge would be to earn a sufficient rate of return to compensate you and your company for all the time, money, effort—and potential ulcers—associated with bringing such a project to fruition. So, you see, it is all a matter of perspective.

Given these many diverging viewpoints, individuals trying to create momentum for developing abandoned industrial sites, or brownfields, face a formidable task. Yet the topic of brownfields redevelopment is alive and well. The news media is writing about it. Local governments have created committees to study it. And seminars on the topic are springing up by the dozens.

What is fueling the interest in brownfields redevelopment? Economics and common sense. The brownfields issue is the anchor weighing down the ship of today's urban redevelopment movement. Although this certainly oversimplifies the problem, the fact remains that the redevelopment of brownfields must be regarded as an integral component of successful urban redevelopment; yet the numerous and complex issues associated with brownfields redevelopment are so daunting that they discourage otherwise interested parties.

Brownfields redevelopment requires extensive knowledge of the law, environmental assessment and remediation, finance, real estate, insurance, and economic development. Congress, however, should take all actions within its power to clarify liability issues and create more attractive and sustainable financial incentives to encourage investment in brownfield redevelopment.

WHAT IS A BROWNFIELD?

The United States Environmental Protection Agency (USEPA) Region 5 defines brownfields as "abandoned, idled or underused industrial and commercial sites where expansion or redevelopment is complicated by real or perceived environmental contamination that can add cost, time or uncertainty to a redevelopment project." [1] The United States Office of Technology Assessment (OTA) provides a similar, albeit broader, definition. The OTA definition of a brownfield includes a site whose redevelopment may be hindered not only by potential contamination, but also by poor location, old or obsolete infrastructure, or other less tangible factors often linked to neighborhood decline.[2]

Brownfields routinely are associated with distressed urban areas, particularly central cities and inner suburbs that once were heavily industrialized, but since have been vacated. A brownfield may be as small as an abandoned gas station on a one-acre plot or as expansive as a steel-manufacturing operation sprawled out over several hundred acres. Brownfields sometimes are defined as the opposite of "greenfields" —property that has not previously been used for commercial or industrial activities and thus is presumed free of contamination.

Brownfields sites may be divided into four categories:

1. sites that—despite needed remediation—remain economically viable, due to sufficient market demand;
2. sites that have some development potential, provided financial assistance or other incentives are available;
3. sites that have extremely limited market potential even after remediation; and
4. currently operating sites that are in danger of becoming brownfields because historical contamination will ultimately discourage new investment and lending.[3]

Thus, from the developer's perspective, the focus of real estate professionals, corporations, government authorities, and other stakeholders should be on brownfields that are viable for economic development. "Viable brownfields" are defined as underutilized properties with actual or perceived environmental liabilities that, due to their inherently positive market attributes, may be economically redeveloped into productive assets. Properties that cannot be characterized in this manner are the least likely to be redeveloped with private resources and are the most likely to require either significant public subsidies or intervention to spur redevelopment efforts.

Although a small percentage of brownfields sites may have high contamination levels and be candidates for addition to the list of most heavily contaminated sites identified in the nation, the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), or similar state priority lists, a large number of brownfields sites will likely never be listed. These sites will not be listed because (1) they have much lower contamination levels, or (2) the environmental condition of these sites will not be evaluated. Abandoned or underutilized industrial and commercial properties with no

actual contamination also may suffer from the "brownfields stigma" until a site assessment proves the property is clean. Little information about the environmental condition of many brownfields sites is currently available.

Essential to the brownfields issue is distinguishing between NPL sites—the worst known contaminated sites with little prospect for economically viable reuse—and those sites characterized by low to medium levels of environmental contamination. As of 2002, the USEPA had identified nearly 1,250 high-priority sites that pose significant risks to human health and safety. These NPL or "Superfund" sites demand monumental effort and resources to restore and manage. The balance of contaminated sites generally are easier to clean and offer greater opportunities for reuse.

WHY ARE BROWNFIELDS DEMANDING ATTENTION?

The sheer enormity of the brownfields dilemma has drawn it into the national spotlight, provoking the United States Conference of Mayors to declare the situation an emergency.[4] In 1995, there were an estimated 130,000 to 450,000 contaminated commercial and industrial sites around the country, according to the United States Government Accounting Office.[5] Currently, GAO estimates have climbed to over one million brownfield sites. No community is immune. Officials in Cook County, Illinois have identified 329 polluted industrial sites within county boundaries. A survey of Toledo, Ohio businesses found that 62 percent of the area's commercial and industrial real estate transactions are encumbered by environmental issues.[6]

Although these numbers are impressive, the real impact of brownfields is more dramatically summed up in dollars and cents. Current estimates place the cost of cleaning up the nation's brownfields at $650 billion. That is just the initial cleanup tab. Brownfields also represent millions of unrealized tax dollars and millions in lost wages.[7] Their presence contributes to reduced economic development and job creation in urban areas, particularly in central cities and older suburbs.[8]

According to a survey by the United States Conference of Mayors, 33 cities with brownfields sites conservatively estimated their cumulative annual loss of tax revenues at $121 million. Using more optimistic estimates, they projected losses at $386 million. This data suggests that more than 20,000 cities and other municipalities nationwide could be losing billions of dollars each year in local tax receipts resulting from their failure to restore brownfields to economic viability.[9]

Most of the nation's brownfields are caught in a vicious cycle of decline, which can be depicted as follows:[10]

1. A property owner, unwilling or unable to sell contaminated property, mothballs it, thus undermining the local tax base.
2. Vacant facilities deteriorate and invite arson, illegal dumping, and vandalism, including the stripping of parts and materials.

3. Unaddressed contamination may spread, further eroding the property value, escalating the cleanup cost, and threatening the economic viability of adjoining properties.
4. Potential investors, faced with uncertain costs and legal liabilities, seek development opportunities elsewhere.
5. Brownfields sites become unwanted legal, regulatory, and financial burdens on the community and its taxpayers.

The stigmatic impacts of brownfields on communities are manifold. Potential investors, concerned about liability, shy away from developing abandoned industrial sites. Real estate buyers are reluctant to invest in brownfields, which further diminishes their value. Communities lose out on property-tax revenues. Public services become less available and area unemployment rates soar.[11] The convergence of these economic development and environmental issues comes at a critical time for local officials struggling to craft community revitalization strategies targeting older industrial areas and combat urban sprawl.

HOW DID THE BROWNFIELDS ISSUE EVOLVE TO A CRISIS STATE?

The proliferation of brownfields and the failure to address their redevelopment effectively can be traced to a number of forces, including:

1. the unintended effect of environmental laws on brownfields redevelopment;
2. enforcement policies that target lenders; and
3. ignorance of the science of contaminated property.

The Unintended Effect of Environmental Laws on Brownfields Redevelopment

Environmental laws are a relatively recent phenomenon. The most significant statutes were not enacted and actively enforced until the mid- to late 1970s. Among the most widely publicized of United States environmental laws is CERCLA, also known as the federal Superfund law. Hastily passed in 1980, in the wake of the Love Canal scare, CERCLA established a federal program to identify and remediate chemical spills and abandoned hazardous waste sites believed to pose a significant threat to human health, safety, and the environment. It created a mechanism for assessing the environmental condition of those sites and placing the worst sites on the NPL, making them eligible for federal funds.

Only about 1,250 of the nation's hundreds of thousands of hazardous waste sites are listed on the NPL. To address those sites that do not meet the NPL criteria, states have enacted their own legislation, in the form of mini-CERCLA statutes.

CERCLA, its state equivalents, and the Resource Conservation and Recovery Act (RCRA) were intended to create a comprehensible system for correcting environmental damage that occurred in the past and for preventing future contamination. Instead, applied in the brownfields context, they produced almost the opposite effect. Deciphering these laws has not been easy. Environmental lawyers themselves bemoan the thousands of pages of intricate, complex, and

often contradictory requirements that many environmental programs impose. And until recently, cost/benefit analysis has not played a significant role in the development of new laws. Further, cleanup standards, costs and approaches may differ substantially due to the regulatory program applied to a contaminated property. The end result is that the confusion engendered by environmental laws has inadvertently subverted progress toward redeveloping brownfields, rather than contributing to a positive solution, as originally intended.

Targeting Deep-Pocketed Lenders

In *United States v. Fleet Factors Corp.*, the court found that a lender could be held liable under CERCLA for cleanup if the lender participated "in the financial management of a facility to a degree indicating a capacity to influence the corporation's treatment of hazardous wastes."[12] The court's ruling led other private parties and the government to target deep-pocketed lending institutions in Superfund cases, a trend that further exacerbated the brownfields problem.

Regulators, realizing that the due diligence process required for finalizing a loan would likely uncover any contamination of a property, adopted the view that lenders should act as environmental police. If they failed to uncover environmental hazards, they could become responsible for the cleanup. Lenders reacted by refusing to loan money on projects associated with even a hint of environmental liability. This practice, sometimes referred to as "greenlining," in addition to creating more brownfields, also triggered a credit crunch for industrial financing during the late 1980s and early 1990s. Thus, lessons learned by lenders through tough litigation and unsympathetic court doctrine added to the creation of brownfields. While dramatic recent changes to both CERCLA, through the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996[13] and companion state brownfield statutes have attempted to create "safe-harbors" for lenders on contaminated property, the stigma of historical enforcement practices remains difficult to overcome.

Ignorance of the Science of Contamination

The underlying fears regarding human health and the environment associated with contaminated property have been aggravated in part by a basic lack of understanding within the scientific community concerning the true risks posed by contaminated sites. The science supporting currently mandated risk goals is inconclusive and unrealistic. Yet current policy continues to be driven by inferior scientific evidence, resulting in the proliferation of brownfields and their excessive cleanup for limited returns to human health and the environment.

As an example, current regulations in many cases dictate that contaminated sites be returned to "background" or "naturally occurring" levels of hazardous substances. Such policy decisions regarding levels of "acceptable environmental risk" have little relation to the types of risks people confront daily. After all, the risk to the average commuter of being killed in a car accident is significantly greater than the risk of developing cancer from years of exposure to a mildly contaminated site.[14]

BARRIERS TO BROWNFIELDS REDEVELOPMENT

Former Cleveland Mayor Mike White has cited contamination as the number-one obstacle to urban redevelopment. In large part, the frustration of Mayor White and other officials stems from the ambiguity surrounding brownfields—ambiguity related to legal issues, cleanup standards, liability, and the unavailability of financing.

Brownfields redevelopment is not a zero-sum game. It should result in economic growth for all parties involved. However, until recently, the many barriers to brownfields redevelopment have discouraged progress. These barriers include:

1. ambiguous legal liability;
2. absence of identifiable and consistent cleanup standards;
3. lack of concentrated expertise;
4. potentially substantial capital costs;
5. insufficient financing;
6. clouded federal, state, and local environmental and legal policies;
7. entrenched attitudes among regulators;
8. absence of a consistent redevelopment framework;
9. public opposition;
10. limited demand for redeveloped sites; and
11. competition from greenfields.

Ambiguous Legal Liability

Fear and uncertainty about liability are the greatest obstacles to brownfields redevelopment. The daunting complexity, ambiguity, and overlapping nature of CERCLA and other environmental laws preclude an accurate appraisal of the actual risk of liability.[15] One court has referred to RCRA as "mind-numbing."[16] CERCLA has been called much worse.

Property owners potentially responsible for contamination of a site cannot completely shift their liability to buyers, including redevelopers. As a result, they often mothball property that might otherwise be redeveloped. And, despite the recent amendments codified in the Small Business Liability Relief and Brownfield Revitalization Act of 2002, redevelopers who might otherwise see economic promise in brownfields, still shy away from abandoned industrial sites, largely out of fear of becoming mired in Superfund's legal quagmire. While state voluntary action programs, like the Ohio Voluntary Action Program, have clarified state liability issues, these programs are still complicated and can be procedurally cumbersome.

Absence of Identifiable and Consistent Cleanup Standards

Depending on a number of factors including the date a contaminant was discovered or released, the type of contaminant and the location where the contamination occurred, different regulatory programs may apply to the cleanup process. Based on the regulatory program, the cleanup costs and time required to address the contamination may vary dramatically. The

primary reasons for these differences are due not to the science of remediating the contamination, but the beauracracies created to support these regulatory programs. At the very least, uniform, risk-based remedial approaches, tailored to the properties' end-use must be adopted to increase certainty and consistently reduce costs for brownfield redevelopment.

Simply stated, a developer should not be held to different standards or processes for remediating the same contaminant of concern.

Lack of Concentrated Expertise

Key players involved in commercial and industrial site reuse—including property owners, lawyers, environmental consultants, real estate brokers and professionals, economic development representatives, insurance specialists, lenders, and regulators—have little or no experience in working collectively toward a common goal. In fact, they often engage in counterproductive behavior when it comes to brownfields redevelopment. They are only now realizing that cooperation must replace antagonism to advance each others' interests.

Potentially Substantial Capital Costs

Available data on actual brownfields cleanup costs is limited. However, the price tag can be substantial. Worse yet, potential liability issues make it difficult to determine up front what the final costs will be.

Assessment and remediation costs may range from a few thousand dollars to millions, depending on the site. A significant investment, usually for due-diligence purposes, may be required merely to estimate the anticipated cost of remediation and development. In many cases, potential due-diligence costs prohibit the assessment of smaller sites deemed unworthy of the investment.

Once developers arrive at an estimated cost for assessment and remediation, they cannot assume the cost is finite. In some cases, the process of remediation uncovers unanticipated areas of contamination, which then sends what was originally deemed an economically viable project deep into the red.

Public and private resources for brownfields assessment and remediation are limited—just one more deterrent for would-be developers. Therefore, Congress must create a viable broad-based economic incentive to make significant, measurable progress in tackling brownfield sites. Only by tapping the power of traditional capital markets will Ohio specifically, and the United States in general, encourage meaningful capital investment in brownfield development.

Insufficient Financing

The effect of environmental liabilities on lenders has been dramatic. According to one study, more than 40 percent of commercial mortgage bankers polled said they had backed out of mortgage deals on potentially contaminated properties. About 87 percent of those bankers said that fear of environmental liabilities had delayed transactions. And approximately 70 percent of the survey respondents said environmental problems actually had materialized on properties for which they had arranged mortgages.[17] Ultimately, the prospect of foreclosing on contaminated collateral in the event of default dampens lender interest in brownfields loans.[18]

Clouded Policies

Historically, federal, state, and local policies have done little to spur industrial redevelopment. Rehabilitation tax credits offered during the mid-1970s provided incentives to invest in real estate and redevelopment. These tax incentives helped stem the exodus of businesses from long-established neighborhoods and made reuse more economically attractive. However, these tax advantages effectively vanished under the 1986 tax code revisions limiting passive losses. As a result, investors turned to potentially more lucrative sources of return, such as Wall Street, and many rehabilitation projects failed to materialize.[19] Limited tax relief, allowing current deductibility or remedial costs, offers little incentive to would be brownfields redevelopers or property owners. Further, the utility of federal tax credits for brownfield redevelopment to date has not been meaningful due to significant limitations placed in federal programs. Therefore, any proposed tax credit program should not only be limited only to the most distressed urban areas, as significant brownfields are a problem in every community; the tax credits should be freely transferable; and the tax credits should provide a substantial enough incentive to encourage investment in complex transactions.

Entrenched Attitudes Among Regulators

The latest trend at the legislative level has been to adopt a more user-friendly approach to redeveloping brownfields sites, including attempts to be more flexible and creative in addressing historical environmental liabilities. Yet despite these efforts, significant differences of opinion and philosophy concerning redevelopment, environmental risk, and liability persist within state and federal environmental regulatory agencies. In many instances, the belief that the polluter must pay continues to reign supreme. This lack of regulatory flexibility is a hidden killer of many brownfield transactions.

Absence of a Consistent Redevelopment Framework

The absence of clear and coordinated federal and state guidelines for redeveloping brownfields—a deficiency closely related to ambiguous legal liability issues—has hindered redevelopment.

Meanwhile, the failure to establish local brownfields redevelopment programs presents an often overlooked barrier. Although many local politicians have elevated the brownfields issue to the crisis level within their communities, few communities or cities have taken positive, concrete steps toward implementing a meaningful brownfields redevelopment strategy. As a result, developers attempting to work their way through the maze of city programs and permitting processes frequently abandon the process out of frustration.

Public Opposition

Although certain community groups voice an interest in promoting the cleanup and redevelopment of neighborhood brownfields, their members understandably expect some assurance that remediation will adequately protect their health and the environment. Some are intent on ensuring that traditional, heavy manufacturing-type industry is replaced with nontraditional industries perceived as less harmful to the environment. Unfortunately, this often creates conflict between potential developers and community groups who want the government to ensure the environmental safety of their neighborhoods without due consideration for the costs involved. Further, identifying the true voice of the "community" remains difficult to discern.

Limited Demand for Redeveloped Sites

There is no question about the inventory of brownfields for potential redevelopment—as previously noted, there are hundreds of thousands of these sites nationwide. However, even if all these sites were identified and completely remediated, the evidence suggests there is insufficient market demand for many of these properties due to other market forces (such as poor location, high crime, decaying infrastructure, and similar matters). Therefore, it is unlikely that investors would rush in to develop a large number of these brownfields even if the liability issues were resolved.

Competition from Greenfields

Fierce competition from greenfields communities intent on attracting new development has contributed to what we refer to today as urban sprawl—the practice of building on previously undeveloped land outside the city limits. Urban sprawl is costly. It allows a city's existing roads, bridges, water lines, sewer systems, and rail spurs to go unused while similar infrastructures are duplicated elsewhere. For the community populated by numerous brownfields, billions of dollars in previous public and private investment may go to waste.

Yet many developers choose urban sprawl over brownfields redevelopment, in part because greenfields communities can offer financial incentives, such as tax abatement and low-cost financing, equal to those available from cities where brownfields predominate. To counteract this trend, communities truly interested in meaningful brownfields redevelopment must go beyond leveling the playing field—they must tilt it significantly in favor of brownfields reuse.

BRINGING DOWN THE BARRIERS

Leaping the multiple hurdles to the successful redevelopment of brownfields can be an arduous process. Nonetheless, stakeholders across the nation are attempting to do just that. State Voluntary Cleanup Programs are clearly leading the most innovative trends in this area. These programs have been designed specifically to address the obstacles to brownfields redevelopment. The goals of these programs include integrating issues involving legal liability, technical requirements, and economic incentives. Many of these programs provide technical assistance from regulators, liability assurances through covenants-not-to-sue, and financial incentives, including tax abatement, not available through other state regulatory programs.

Voluntary programs are gaining in popularity because they allow private parties to initiate cleanups and work cooperatively with state agencies, thus avoiding some of the costs and delay that would likely occur if the sites were subject to enforcement-driven programs.[20] They have set the stage for brownfields redevelopment.

FOOD FOR THOUGHT

The environmental and liability issues surrounding brownfields have had the same chilling effect on real estate developers and lenders that the movie *Jaws* has had on swimmers. We know the sharks are out there. And as is the case with certain sharks, some environmental liabilities will eat you alive. Being ripped to shreds in the jaws of a ferocious beast is a gruesome way to die. It is not unlike the experience of the unsuspecting loan officer who extends credit on property that is subsequently identified as a Superfund site, or the inexperienced developer who vows never to tackle the bureaucratic landmines associated with brownfield projects. Yet do we allow the knowledge that sharks exist intimidate us into staying out of the water? Shark experts tell us that few people actually die from shark attacks.[21]

Whether or not you decide to swim will depend on how much you know about a given situation. Are these waters typically shark-infested? If so, what kinds of sharks lurk beneath the surface? Man-eaters or those who dine on plankton? Can a steel cage be built to protect you from the jaws of death? Clearly, where you swim—or whether you swim—will depend in great part on your knowledge of both sharks and the waters in which you intend to swim. Hopefully, Congressional innovations in the area of financial incentives for brownfield redevelopment will encourage interested parties to continue diving into the waters.[22]

NOTES

1. USEPA REGION 5 OFFICE OF PUB. AFFAIRS, BASIC BROWNFIELDS FACT SHEET, (1996).
2. U.S. OTA, STATE OF THE STATES ON BROWNFIELDS: PROGRAMS FOR CLEANUP AND REUSE OF CONTAMINATED SITES, at 8 (1995) [hereinafter STATE OF THE STATES ON BROWNFIELDS].
3. *Id.*
4. U.S. Conference of Mayors, Brownfields Redevelopment Action Agenda Initial Framework (Jan. 25, 1996) [hereinafter U.S. Mayors Report].
5. U.S. GOV. ACCOUNTING OFFICE, GAO/RCED-95-172, COMMUNITY DEVELOPMENT—REUSE OF URBAN INDUSTRIAL SITES (1995).
6. Charles Bartsch, *Restoring Contaminated Industrial Sites*, 10 ISSUES SCI. & TECH., 74 (1994).
7. NORTHEAST-MIDWEST INST., COMING CLEAN FOR ECONOMIC DEVELOPMENT 1–2 (1996) [hereinafter COMING CLEAN].
8. STATE OF THE STATES ON BROWNFIELDS, *supra* note 2, at 4.
9. U.S. Mayors Report, *supra* note 4, at 1–3.
10. COMING CLEAN, supra note 7, at 1–2.
11. Steven Lerner, *Brownfields of Dreams*, AMICUS JOURNAL, Winter 1996, at 17.
12. U.S. v. Fleet Factors Corp., 901 F.2d 1550, 1557 (11th Cir. 1990), *cert. denied*, 498 U.S. 1046 (1991).
13. Public Law No. 104-208 (1996) amending CERCLA to provide safe harbors for lenders, trustees, and certain governmental authorities.
14. *See* Role of Risk Assessment in Redeveloping Brownfields Sites in *Brownfields*, infra.
15. STATE OF THE STATES ON BROWNFIELDS, *supra* note 2, at 6.
16. *See American Mining Congress v. Environmental Protection Agency*, 824 F.2d 1177, 1189 (D.C. Cir. 1987).
17. ENVIRONMENTAL WARRANTY, INC., SURVEY OF 30 TOP COMMERCIAL MORTGAGE BANKERS NATIONWIDE (1995).
18. STATE OF THE STATES ON BROWNFIELDS, *supra* note 2, at 8–9.
19. *Id.*
20. *Id.* at 13.
21. Between 1984 and 1994, sharks killed just seven people in United States waters—three each in Hawaii and California, and one in Florida. To put this number in perspective, according to certain mathematicians, the odds of being hit by lightning are 600,000 to 1; the chances of winning the Florida Lottery are 13 million to 1; and the odds of being attacked by a shark are roughly 300 million to 1. Steve D'Oliveira, *Odds Against Shark Attacks*, SUN-SENTINEL (Fort Lauderdale), Sept. 27, 1995, at 1E.
22. These written remarks were adapted, in substantial part, from Davis, Todd S., *Brownfields: A Comprehensive Guide To Redeveloping Contaminated Property* (2nd Ed. ABA 2002).

Mr. TURNER. Mr. Stone.

STATEMENT OF THOMAS STONE

Mr. STONE. Good morning, Mr. Chairman and members of the subcommittee. My name is Thomas Stone. I'm the executive director from Mt. Pleasant NOW Development Corp., a CDC focussed on housing and economic development.

The agency's service area is the Mt. Pleasant neighborhood, or ward 3, one of the southeast communities of Cleveland. I'm here today to talk briefly about the impact of brownfields in Cleveland and about one specific brownfield in my service area.

A study conducted by the Cleveland Neighborhood Development Coalition Industrial Committee indicated that Cleveland has eight industrial parks. The combined total acres of the eight industrial parks was 569. Of the total number of acres, in 2003 only 88 acres were available for development of new industrial facilities.

The study in 2003 indicated that 94 acres were slated for development. There appears to be and will continue to be demand for additional space into the future. Therefore, more acreage for industrial and commercial uses must be established. From the 94 acres to be developed, 1,416 jobs will be retained or created. This equates to 15 jobs per acre.

The study further identified the next industrial areas within the city of Cleveland. Seventy-three sites were identified. The sites had to be three acres or larger. The sites were categorized as vacant/non-productive or underutilized. The 73 sites represented 1,641 acres.

Allow me now to make some rough calculations to establish the economic value of these new sites. While we observed 15 jobs per acre created from the 94 acres previously mentioned, let's be conservative and say only 7 jobs per acre would be created on the new sites. That translates into 11,487 new or retained jobs. Using an average manufacturing annual wage of $47,000, new payrolls to be taxed by the city would equal, let's call it $539 million. A tax, 2 percent tax would generate $10,797,000 in city tax revenue. If only 10 percent of the jobs are created annually, approximately $1 million in tax revenue would be created.

The other benefits that will be derived by cleaning sites and making them available for development as are follows: Increase employment in the city, so desperately needed, reduction of those needing public assistance, and removal of blighted areas.

Now, while the study focused onsites that were three acres and larger, there are many brownfield sites located within neighborhoods that are smaller but could become community and/or economic assets. One example is a junkyard site located at East 114th and Kinsman Avenue in Cleveland. The total size is 2.15 acres. Another interesting fact concerning this site is that it is immediately adjacent to Luke Easter Park. Luke Easter Park is the largest urban park in State of Ohio at approximately 110 acres.

The junkyard site's former uses were an exterminating warehouse storing pesticides, an auto wrecking yard, a dry cleaning plant, a gas station and an embalmer's facility. The main determined contaminant on the site is Benzo Pyrene.

My CDC, Mt. Pleasant NOW Development Corp., for 2 years has been pursuing a project to acquire and remediate the site to convert it to usable land. After the land is remediated, the plan is to develop it for commercial/retail space. The project costs are as follows: Costs to acquire land, $137,000; costs to remediate, $416,000; cost to determine scope of contamination, $50,000. A total project cost of $603,000.

To date, Cuyahoga County and the city of Cleveland have provided grant funds to cover the cost of the analysis to determine the scope of contamination. Mt. Pleasant NOW Development Corp. is currently requesting from the city of Cleveland a $142,000 loan to purchase the site and demolish an old abandoned structure.

The remaining challenge to making the former junkyard a viable site is obtaining funding for remediation. In 2004, Mt. Pleasant NOW Development Corp. submitted an application to the Ohio Department of Development Assistance Fund for $553,000 to acquire and clean the site. The application was rejected, largely because at the time of application there was no end user for the site identified.

If the sources of cleanup of brownfield sites will continue to be limited to those sites that have identified end users, these sites will continue to remain hazardous, unproductive eyesores in our communities. Also, if funding is not made available so that municipalities and non-profit organizations can acquire the sites, development of sites will continue to be hindered. Not to mention that this is an example of a blighted, contaminated site immediately adjacent to an important community asset, Luke Easter Park.

This is just one example of many small brownfield sites scattered throughout neighborhoods and communities in the State and country. Securing significant funding to return brownfields to productive use should be a major part of this country's initiative to strengthen America's cities.

You very much for your time this morning.

[The prepared statement of Mr. Stone follows:]

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STATEMENT OF THOMAS K. STONE
EXECUTIVE DIRECTOR
MT. PLEASANT NOW DEVELOPMENT CORPORATION
BEFORE THE HOUSE GOVERNMENT REFORM SUBCOMMITTEE ON
FEDERALISM AND THE CENSUS
UNITED STATES HOUSE OF REPRESENTATIVES
"The Ohio Experience: What Can Be Done to Spur Brownfield Development in America's Heartland?"

MAY 16, 2005

INTRODUCTION

Good morning, Mr. Chairman, and members of the subcommittee. My name is Tom Stone. I am the Executive Director of Mt. Pleasant NOW Development Corporation. My organization is a community development corporation or CDC focused on housing and community/economic development. The agency's service area is the Mt. Pleasant Neighborhood or Ward 3, one of the southeast communities of Cleveland. I am here today to talk briefly about the impact of Brownfields in Cleveland and about one specific Brownfield in my service area.

CLEVELAND INDUSTRIAL PARKS

A study conducted by the Cleveland Neighborhood Development Coalition Industrial Committee indicated that Cleveland has eight industrial parks. The combined total acres of the eight industrial parks was 569. Of the total number of acres, in 2003 only 88 acres were available for development of new industrial facilities. The study in 2003 indicated that 94 acres were slated for development. There appears to be and will continue to be demand for industrial space into the future. Therefore more acreage for industrial and commercial uses must be established. From the 94 acres to be developed, 1,416 jobs were to be retained or created. This equates to 15 jobs per acre.

The study further identified the next industrial areas within the city of Cleveland. Seventy-three (73) sites were identified. The sites had to be three acres or larger. Sites were categorized as vacant/non-productive or underutilized. The 73 sites represented 1,641 acres.

Allow me now to make some rough calculations to establish the economic value of these new sites. While we observed 15 jobs/acre created from the 94 acres previously mentioned, let's be conservative and say only seven jobs per acre would be created on the new sites. That translates into 11,487 new or retained jobs. Using an average manufacturing annual wage of $47,000, new payrolls to be taxed by the city would equal $539,889,000. A 2% tax would generate $10,797,780 in city tax revenue. If only 10% of the jobs are created annually, approximately $1 million in tax revenues would be created.

The other benefits that will be derived by cleaning sites and making them available for development are as follows:

- Increased employment in the city
- A reduction of those needing public assistance
- Removal of blighted areas

SMALL NEIGHBORHOOD BROWNFIELDS

While the study focused on sites that were three acres and larger, there are many Brownfield sites located within neighborhoods that are smaller but could become community and/or economic assets. One example is a junkyard site located at E. 114th and Kinsman Avenue in Cleveland. The total size is 2.15 acres. Another interesting fact concerning this site is that it is immediately adjacent to Luke Easter Park. Luke Easter Park is the largest urban park in the state of Ohio at approximately 110 acres.

The junkyard site's former uses were an exterminating warehouse storing pesticides, an auto wrecking yard, a dry cleaning plant, a gas station and an embalmer's facility. The main determined contaminant on the site is Benzo Pryrene.

My CDC (Mt. Pleasant NOW Development Corporation) for two years has been pursuing a project to acquire and remediate the site to convert it to usable land. After the land is remediated, the plan is to develop it for commercial/retail space. The project costs are as follows:

• Cost to acquire land	$137,000
• Cost to remediate	$416,000
• Cost to determine scope of contamination	$ 50,000
	$603,000

To date, Cuyahoga County and the city of Cleveland have provided grant funds to cover the cost of the analysis to determine the scope of contamination. Mt. Pleasant NOW Development Corporation is currently requesting from the city of Cleveland a $142,000 loan to purchase the site and demolish an old abandoned structure.

The remaining challenge to making the former junkyard a viable site is obtaining funding for remediation. In 2004, Mt. Pleasant NOW Development Corporation submitted an application to the Ohio Department of Development Assistance Fund for $553,600 to acquire and clean the site. The application was rejected largely because at the time of application there was no end user for the site identified. If the sources for clean-up of Brownfield sites will continue to be limited to those sites that have an identified end user, these sites will continue to remain hazardous, unproductive eyesores in our communities. Also, if funding is not made available so that municipalities and non-profit organizations can acquire the sites, development of sites will continue to be hindered. Not to mention that this is an example of a blighted, contaminated site immediately adjacent to an important community asset Luke Easter Park.

This is just one example of many small Brownfield sites scattered throughout neighborhoods and communities in the state and the country. Securing significant funding to return Brownfields to productive use should be a major part of this country's initiative to strengthen America's cities.

STATEMENT OF BARRY FRANZ

Mr. FRANZ. Good morning, Mr. Chairman and members of the subcommittee. My name is Barry Franz. I'm a principle with the consulting firm of Civil & Environmental Consultants located in Cincinnati. I'm a registered professional engineer in the State of Ohio and I am also a certified professional under Ohio's Voluntary Action Program.

In Ohio, both local and State governments have had to be the lead entity in brownfields redevelopments. They both have a vested interest in maintaining the economic and environmental security of their citizens. The majority of Federal and Ohio programs available to date to assist in brownfields redevelopment require local government agencies to be the lead entity.

These public-private partnerships are creating successful brownfield redevelopments, but these successes are slow in coming as compared to the total brownfields properties found in Ohio. With their tax base at stake, many local governments in Ohio are eager to work with private developers to redevelop their local brownfield properties. This eagerness does not change the fact that brownfields redevelopment is complex and costly as compared to the greenfield property. Economic incentives are necessary to spur this redevelopment in Ohio, particularly among small to medium-size brownfields properties.

As an example to spur brownfield's redevelopment, the tax bill proposed by Congressman Turner could generate for Ohio many millions of dollars annually for brownfields redevelopment. In addition, brownfields tax credits could be allocated for up to 50 percent of the cost of demolition and remedial actions pursuant to the property being enrolled in the State brownfields programs, such as Ohio's Voluntary Action Program.

It is important to private developers to see a return on their cost of the assessments and remedial actions required at the property.

While numerous programs are successfully assisting in the identification, cleanup and redeveloping of Brownfields properties, much support is still needed. Legislation such as that proposed by Congressman Turner and others will have a significant impact on all of our efforts, both public and private.

I appreciate the opportunity to share with you my perspective as a private consultant regarding the status of brownfields development in Ohio. Thank you.

[The prepared statement of Mr. Franz follows:]

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TESTIMONY OF BARRY FRANZ
PRINCIPAL
CIVIL & ENVIRONMENTAL CONSULTANTS, INC.
BEFORE THE SUBCOMMITTEE ON
FEDERALISM AND THE CENSUS
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

"THE OHIO EXPERIENCE: WHAT CAN BE DONE TO SPUR BROWNFIELD DEVELOPMENT IN AMERICA'S HEARTLAND?"

MAY 16, 2005

INTRODUCTION

Good morning, Mr. Chairman, and members of the Subcommittee. My name is Barry Franz. I am a principal with the consulting firm of Civil & Environmental Consultants, Inc. out of their Cincinnati, Ohio branch office. I am a registered Professional Engineer in the State of Ohio and a Certified Professional under the State of Ohio's Voluntary Action Program administered by the Ohio Environmental Protection Agency, Division of Emergency and Remedial Response. Today, I appear before you to testify as a private consultant working in the area of Brownfield Redevelopment in the State of Ohio.

I wish to thank you Mr. Chairman, and the members of this Subcommittee, for this opportunity to speak before you today.

OVERVIEW

As defined by statue, brownfields are "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." Brownfields are everywhere, from the vacated corner service station in the smallest township or village to the dilapidated manufacturing buildings that clutter the largest of cities' downtown landscape. Brownfields are properties that are identified as having an environmental barrier(s) which must be overcome prior to the property's successful reuse. The consensus a few years ago was that brownfields properties were perceived as problems and only a few entities were willing to tackle the myriad of issues to bring a property back into productive use. Today the general consensus among various development entities and their partners (both public and private) that redevelopment (i.e.; bringing back into a productive use) of a brownfield site is important for the economic well-being of a community, as well as necessary for the community's environmental well-being. These properties are now being viewed as an opportunity more so than a problem. To capitalize on these opportunities, partnerships between local, state, and federal government along with real estate developers and other private sector entities, must be formed in order to overcome the many obstacles that are inherent to most all brownfield redevelopment projects.

STATE OF OHIO'S EFFORTS

The State of Ohio's first serious attempt to address the complex issue of brownfields redevelopment was through its development of the Voluntary Action Program (commonly called the 'VAP'). Although this program provided a regulatory framework for engaging in brownfield cleanup projects, it has not produced the number of successes that many thought it should even

with the tax abatement and deferrals available for a property which receives a Covenant-Not-To-Sue ('CNS'). More greenfields development is currently underway in Ohio as compared to brownfields redevelopment. Simply put, it costs more to cleanup and redevelop a brownfield property that it does to develop a 'greenfield' property here in Ohio. In many cases, economics drives the project and therefore greenfields properties are selected. Only during those rare instances when the economics are truly positive (i.e.; no lawsuits; limited or significantly reduced environmental liability; capital is made available; tenants are willing to rent, lease, or buy; etc.), will a brownfield property be redeveloped here in Ohio.

The State of Ohio created the Clean Ohio Revitalization Fund Program, commonly called the 'CORF,' to assist more strongly in the economics portion of the brownfields redevelopment equation. This program provides grants to a local public entity, most commonly, the local government, in partnership with an end user to cover the costs of remediation and certain infrastructure improvements. While this has been a boon to those properties successful in securing these grants; for many brownfields properties in Ohio, the economics are still not positive. Although other state funding mechanisms are available and have been available for a period of time prior to the creation of the Ohio's CORF, they are not well known and for many public-private partnerships are only available to the public entities, and are funds which require repayment as they are not grants. The CORF needs to be continued and fully funded. In addition, those 'contaminants' eligible under the CORF should include lead-based paint.

ROLE OF OHIO'S LOCAL AND STATE GOVERNMENTS

In Ohio, both the local and state governments have had to become the lead entity in brownfields redevelopments. They have a vested interest in maintaining the economic security of their citizens (as well as their tax base). The majority of federal and state programs available today to assist in brownfields redevelopment require local and state governments to be the lead entity.

These public-private partnerships in Ohio are creating successful brownfields redevelopments but these successes are slow in coming with the number of brownfields properties far exceeding, by at least an order of magnitude or more, the number of successful redevelopments. Some of the most successful local government entities include Greater Cleveland and Cuyahoga County, and the cities of Toledo, Springfield, Columbus, and Dayton, all whom have had multiple brownfield properties redeveloped. Other local governments have also had their share of success, but not to the extent or degree as the aforementioned entities.

Most of the successful brownfields redevelopments in Ohio to date may be considered as 'low-hanging fruit'. These are brownfield properties that are 'lightly' contaminated, in a desirable location, or some combination of both. But even these have not been without their obstacles. As other desirable brownfields properties are redeveloped in Ohio, the remaining brownfield properties will face an increasing number of obstacles to their redevelopment. It should be noted here that while a large number of Ohio brownfield properties are candidates for redevelopment, not all brownfield properties present an opportunity for redevelopment.

OBSTACLES

In a number of previous statements, I have made references to obstacles to brownfields redevelopment in Ohio. What are some of these obstacles? Some of the more common include:

- 'Highly' contaminated sites (i.e.; multiple contaminants and media);
- Sites in 'undesirable' locations (e.g.; no interstate connection near-by, no rail transportation; etc.)
- Lack of infrastructure or undersized infrastructure servicing the property (e.g.; lack of wastewater treatment capacity; undersized water service; etc.)
- Market conditions more favorable to 'greenfield' site development;
- Properties that are 'mothballed' because the owner has no incentive to change the property status;
- Environmental liability issues (for both the current owner and the future owner); and
- Fast-tracking of a project (many real estate development deals occur quickly).

These are just a few of the common obstacles I have encountered in working with development entities. Two key obstacles that are purposely not included above are lack of available capital and financial incentives, such as tax deferrals, abatement and/or credits. They were not included because they are two huge obstacles common to both greenfield and brownfield development efforts.

WHAT IS WORKING AND WHAT IMPROVEMENTS ARE NEEDED

President Bush's signing of "The Brownfields Revitalization and Environmental Restoration Act of 2001" (BRERA) into law was an important and critical step in the efforts to redevelop brownfield properties. BRERA provided much needed funding for the states and local governments to perform assessments, remediate properties, fund state brownfield programs, and establish criteria for environmental liability relief. However, this program needs to be continued

and must be fully funded to assist state and local governments in their efforts to provide the needed leadership and economic incentives for brownfields redevelopments.

Many local governments have taken the lead in addressing brownfield properties through various means of acquiring these properties and then cleaning them up. These local governments should not be penalized for trying to do the right thing rather then sitting on their hands. I believe that the Small Business Liability and Brownfields Act of 2002 should be modified such that local governments are not held as potentially responsible parties ('PRPs') because they have voluntarily 'taken' a property before this Act was passed. In addition, certain costs such as administrative costs are not considered as eligible costs under this Act. This too should be modified to allow local and state governments to cover appropriate and necessary administrative costs.

With their tax base at stake, many local governments in Ohio are eager to work with private developers to redevelop their local brownfield properties. This eagerness does not change the fact that brownfields redevelopment is complex and costly as compared to a greenfield property. Economic incentives are necessary to spur this redevelopment in Ohio, particularly among small and medium-sized brownfield properties. One of the more common tax incentives that has been utilized is a tax incentive to offset the cost of any remedial actions at a brownfield property.

The tax bill (The Brownfield Revitalization Act – formerly H.R. 4480) proposed by Congressman Turner would allow up to $1 billion dollars annually in deferral tax credits being allocated to each state by population as related to the poverty level. This would generate for

Ohio upwards of $35 million dollars annually. In addition, brownfields tax credits would be allocated for up to 50% of the cost of demolition and remedial actions pursuant to the property being enrolled in Ohio's VAP with a Covenant-Not-To-Sue document being obtained. This is important to private developers to see a 'return' on the costs of the remedial action required at the property.

The 'polluter pays principle' must be retained in any form of tax incentive. Those that 'make the mess' should have some responsibility for correcting the problem. However, there currently does not exist in any form, sufficient incentives to get most original polluters to pay to remediate their properties. The component in the tax bill which allows a polluter to cover a minimum of 25% of the remedial action costs and receive full liability release for the brownfields property is a means of getting small and medium-sized brownfield properties being redeveloped. Although this will be a very controversial component of the tax bill, it is critical to moving forward on many economic levels.

Another key tax incentive issue for brownfields redevelopment which should be addressed is H.R. 877 which includes three key components:

1. Make permanent the expensing of brownfields cleanup costs.
2. Make the definition of "hazardous substances" broader to include petroleum, pesticides, lead paint, and asbestos.
3. Remove the "recapital" portion of the Internal Revenue Code Section 198 when the property is sold or otherwise disposed.

The items discussed in this section should clearly indicate that brownfields redevelopment, not only in Ohio, but across the United States is quite diverse and a 'one size to fit all' does not necessarily work. Therefore, a range of incentives as discussed is needed to stimulate and increase the number of brownfield properties undergoing redevelopment in Ohio.

CLOSING

While numerous programs are successfully assisting in the identification, cleanup, and redeveloping of brownfield properties, much work is still needed. Legislation, such as that proposed by Congressman Turner and others, will have a significant impact on all of our efforts, both public and private, to successfully redevelop brownfield properties into productive use properties here in Ohio. In addition, the current changes and modification being made to Ohio's programs must continue and be fully funded and supported in order to continue the progress that has been started. We strongly support these efforts to keep the focus on brownfields redevelopment and pass appropriate legislation into law to spur redevelopment.

Thank you for allowing me this opportunity to share with you my perspective as a private consultant regarding the status of brownfields redevelopment here in Ohio and also thank you for your efforts to further the existing programs and pass new legislation to redevelop brownfields.

STATEMENT OF CRAIG KASPER

Mr. KASPER. Good morning, Mr. Chairman, members of the subcommittee. Thank you for the opportunity to testify about the issues affecting brownfield development in Ohio. I'm Craig Kasper, chief executive officer of Hull & Associates, and the firm's Urban Revitalization and Conservation Practice Leader. Our firm specializes in helping communities in the private sector transform neglected or abandoned property into productive uses.

As Mr. Davis said, in Ohio we have two tools to help redevelopment. One is our Voluntary Action Program. The second one is our financial incentive, the $400 million Clean Ohio Fund. The funds from these programs are used to preserve green space and farmland, establish recreational trails, and conduct brownfield assessment and cleanup. In Ohio we have also been relatively successful at attracting Federal assessment and cleanup funds.

While the Clean Ohio Fund and Federal funds are outstanding examples of incentives that motivate public and private investment in brownfields, other opportunities, such as Federal tax credits, are not only viable funding opportunities, but are necessary to help the enormous population of abandoned and underused real estate in urban cores and rural industrial communities.

Today you have heard testimony of many different issues affecting brownfield redevelopment from a variety of skilled stakeholders. I would like to focus my testimony briefly in the following three areas: Inconsistencies in cleanup regulations that can be disincentives to using public funds; the lack of assessment funding necessary to accurately understand the cost of cleanup and demolition; and finally, funding necessary for critical items beyond assessment of cleanup, such as demolition and infrastructure improvement and environmental insurance, all necessary to make brownfields transactions successful.

While many States have cleanup programs to cost effectively remedy brownfields, there's still a great deal of conflict between the State and Federal cleanup programs. In Ohio, we struggle sometimes with the acceptance of the State's Voluntary Action Program versus the Federal Memorandum of Agreement [MOA].

For example, a volunteer in Ohio who chooses to remediate a brownfield must go through an arduous administrative process to gain Federal acceptance on a cleanup the State would have accepted with fewer administrative hurdles.

Requiring brownfield redevelopments to go through inconsistent or arduous cleanup programs to acquire new funding, such as Federal tax credits, may impede encouraging more brownfield redevelopment because of issues associated with cost and time.

Many brownfields continue to sit vacant and idle because communities cannot afford upfront assessment activities and potential developers do not understand cleanup costs and the properties' associated liability risks. In order to accurately understand these, adequate assessment of the properties must be completed. Unless the real estate value of the brownfield property outweighs the cost of assessments, remediation and infrastructure, most of these properties carry upside down pro formas and become speculative developments. This can make developers hesitant to invest sometimes significant funds early on to understand the environmental issues.

While U.S. EPA brownfield assessment grants and our own Clean Ohio assistance fund are valuable sources for funding assessments, the competition for these funds is fierce and the needs significantly outweigh those sources.

Consideration should be given to allow entities who ultimately clean up a property in, of course, an improved State program offset not just the remedial dollars, but the assessment dollars with financial incentives, including proposed tax credits.

Finally, while cleanup and assessments carry a big price tag of brownfields, other issues that exist that can be just as critical to a successful development. Demolition, upgrading infrastructure, and environmental are just a few examples. Consideration to all critical activities necessary for redevelopment should be considered as eligible cost onsites that are ultimately cleaned up and, of course, with an approved State program.

In conclusion, I believe Ohio is a frontrunner in implementing programs that motivate brownfield redevelopment. But as successful as Ohio is, the resources do not scratch the surface of the legacies created from our industrial heritage.

Through greater Federal investment, whether through financial incentives or working toward streamlined brownfield cleanup programs, the potential exists for increased brownfield redevelopment opportunities. The additional Federal attention to brownfields issued could sustain the work already underway at the local and State level, and could provide the expansion of some existing quality cleanup and economic development programs.

I thank you for the time today.

[The prepared statement of Mr. Kasper follows:]

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Statement of Craig A. Kasper
Chief Executive Officer, Hull & Associates, Inc.

on
"The Ohio Experience:
What Can Be Done to Spur Brownfield Development in America's Heartland?"

before the
U.S. House of Representatives
Committee on Government Reform
Subcommittee on Federalism and the Census

May 16, 2005

Mr. Chairman and honorable members of the Subcommittee, thank you for the opportunity to testify about the issues affecting brownfield development in Ohio and what opportunities exist to encourage redevelopment activity. I am Craig Kasper, CEO of Hull & Associates, Inc., and the firm's Urban Revitalization and Conservation Practice Leader. Our firm is proud to assist clients in building stronger economic futures for their communities and improve the quality of life for the people who live there by using sound environmental guidance when transforming neglected or abandoned property into viable real estate. Hull has gained respect in the field of brownfield redevelopment based on our reputation as a diverse team of experts in the areas of economic development, site assessment and remedial planning, risk assessment, remedial construction services, funding and planning, and public relations. As a firm, we continue to support sound policy changes at the state and federal level that create opportunities for brownfield redevelopment incentives and encourages environmental cleanup and economic development in areas where it is most needed.

Today, you will hear testimony on many different issues affecting brownfield redevelopment from a variety of skilled stakeholders with significant experience in the brownfield arena. I would like to focus my testimony on the following three areas:

1. The lack of funding with many communities to conduct the upfront assessments to accurately quantify the cost of cleanup and environmental risks at brownfields;

2. Impediments to brownfield redevelopment that can result from inconsistencies in regulations between federal, state and individual cleanup programs; and,

3. Funding programs that could provide money for environmental liability insurance and demolition in addition to cleanup and assessment.

Impediments to Brownfield Redevelopment

There are a number of barriers to successful brownfield redevelopment, many of which are not unique to Ohio or the Midwest. In fact, many of the impediments we see in the Midwest are similar to those experienced nationwide. These road blocks include financing issues and costs for environmental assessment, cleanup and demolition; liability concerns; the attractiveness of agricultural land or green space versus brownfield redevelopment; funding availability in the form of grants versus loans; and the sometimes conflicting requirements of state and federal regulatory programs.

Lack of Funding to Quantify Remediation Costs

Many brownfields continue to sit vacant and idle because potential developers do not understand cleanup costs and the property's associated liability risks. While many states, including Ohio, have implemented some administrative remedies for liability, such as Covenants Not to Sue through the state's Voluntary Action Program once a property is cleaned up, the issue of accurately quantifying the inherent risks and remedial costs is still a significant hurdle in brownfield redevelopment.

In order to accurately quantify remedial costs, adequate assessment of these properties must be completed. However, many communities cannot afford the upfront assessment activities to adequately understand the remedial costs. Unless the real estate value of the brownfield property outweighs the cost of assessment, remediation, and infrastructure improvement – in other words the low hanging fruit – most of these properties carry upside down pro formas and become speculative developments. This can make developers hesitant to invest sometimes significant funds early on to understand the environmental issues of impaired sites which they would not incur in greenfield areas. Without accurately understanding the cleanup costs and uncertainties of brownfields, it is difficult for sellers, purchasers, lenders and the community to proceed expeditiously and comfortably with redevelopment. Ohio has been successful at attracting U.S. EPA Brownfield Assessment grants, and our own Clean Ohio Assistance Fund has been used many times to provide funding for assessments. However, the competition for these funds is fierce given that the needs significantly outweigh those sources. Consideration should be given to allow entities who *ultimately cleanup a property in accordance with an approved state program* to offset not just the remedial dollars, but the assessment dollars with financial incentives, including tax credits.

Inconsistencies in Federal and State Cleanup Programs

While many states, including Ohio, have developed cleanup programs to cost-effectively remedy brownfield sites, there is still a great deal of overlap and conflict between federal regulations and other cleanup programs. In Ohio, we struggle with the acceptance of the state's Voluntary Action Program (VAP) versus the federal Memorandum of Agreement (MOA). For example, in Ohio, a volunteer who chooses to remediate a brownfield must go through an arduous administrative process to gain federal acceptance on a well-done cleanup, even though the state would have accepted the work with fewer administrative hurdles. In certain instances, federal funding, such as brownfield revolving loan funds, requires the more administratively burdensome federal process – many times causing a time conflict with the scheduled redevelopment. Requiring brownfield redevelopments to go through the federal MOA process to acquire new funding, such as tax credits, may not accomplish the goal of encouraging more brownfield redevelopment because of issues associated with cost and timing.

In addition, inconsistencies between different cleanup programs can result in cleaning up the same chemical at the same property to different standards resulting in increased costs with no added environmental benefit. Without closing these loopholes and eliminating the administrative hurdles between cleanup programs, the remediation process continues to remain costly and uncertain.

Funding for Demolition and Environmental Insurance

Finally, as we have seen in Ohio with our own Clean Ohio Fund projects, demolition of old structures can be just as costly as the environmental cleanup at a brownfield. In addition, almost every project I have been involved in over the last several years looks to environmental insurance as a means of transferring the risks inherent to these contaminated properties. The cost of demolition and procuring environmental insurance should be given equal importance to remediation when defining eligible costs in any funding program.

Incentives to Encourage Brownfield Redevelopment Activity

The issues I have just discussed are only a few with which all stakeholders struggle when redeveloping brownfields. Here in Ohio, we are fortunate to have probably the best brownfield cleanup and financial incentive program in the country in the Clean Ohio Fund. The program – created by House Bill 3 and approved by voters as Issue 1 in November 2000 – consists of four competitive funding programs totaling $400 million. The funds from these programs are used to preserve green space and farmland, establish recreational trails, and revitalize blighted neighborhoods by cleaning up and redeveloping polluted properties.

Since 2002, the Clean Ohio Revitalization Fund has provided $76,555,992 for 35 projects around the state, and an additional 29 projects have been funded for $9,646,875 through the Clean Ohio Assistance Fund. While the Clean Ohio Fund is an outstanding example of programmatic incentives available at the state level, other opportunities, through avenues such as federal tax credits applied to investments in site assessments, cleanups and demolition, are viable options the subcommittee may want to weigh during its investigation of ways to encourage redevelopment activity.

More than 20 states already use some form of tax incentives to encourage brownfield reuse; additional federal incentives could enhance these programs and provide additional resources to promote economic development and reinvestment opportunities in blighted areas. In addition, tax incentives that focus specifically on environmental cleanup of contaminated properties – when coupled with other economic development tools – have the ability to generate renewed interest in brownfield versus greenfield development. Furthermore, developing tax or other financial incentives that would provide a funding tool to help cover the costs associated with assessment, securing environmental liability insurance and conducting demolition could go a long way toward promoting and encouraging new brownfield development in critical regions of Ohio and the Midwest. Without these tools, many former industrial towns and cities will continue to sit on the sidelines, faced with the blight associated with brownfield properties while struggling to find financial incentives that could help jumpstart new economic growth and redevelopment in their communities.

In conclusion, while there are challenges to overcome in encouraging additional interest and investment in brownfield activity, some of these issues are currently being addressed in limited forms at the state or local level. I believe Ohio is a frontrunner in implementing programs that motivate brownfield redevelopment – but as successful as Ohio is, the resources do not scratch the surface of the legacies created from our industrial heritage. Through greater federal investment – whether through financial incentives or working toward streamlining brownfield programs by eliminating overlaps and inconsistencies between state and federal regulatory requirements – the potential for additional brownfield redevelopment opportunities in Ohio and the Midwest increases. This additional federal support and attention to the brownfields issue could sustain the work already underway at the state level, and could provide for the expansion of some of the quality cleanup and economic development programs currently in place.

I thank you for the opportunity to testify before you today, and I'd be happy to answer any questions you may have.

Mr. TURNER. Again, I would like to thank each of you for taking the time for being here and the expertise that you bring to the table.

You will note that in the first panel we had, we had representatives of government and government agencies. In this panel we have the private sector efforts on brownfield redevelopment. What's exciting here is we have two consultants that are working in brownfields, we have two developers.

And then, Mr. Machaskee, I appreciate your participation here and the story that you were telling, because typically when we do this type of hearing and we focus on brownfield redevelopment, we want to hear from those who undertake brownfield redevelopment, who will focus on a site in trying to get it cleaned up and ultimately used with jobs returning, those who act as consultants in providing the expertise to accomplish that and the Federal agencies and State agencies that provide either oversight functions or funding functions.

What's exciting about your story, being an end user, is that you can give us insight into how these programs and processes don't necessarily serve the timeline that business has. When you're going to undertake as a possible end user of a site, looking at locating a new facility, you're not necessarily going to have the same luxury of time that we will invest in sites that we as a community have determined to be important and seek to for the redevelopment.

You spoke about two issues that I would like you to give your additional thoughts on. And the one being the timeline of the business decisionmaking and what we need to do to make certain that these sites are business ready when an opportunity comes along.

And the second is you spoke about the Phase I process that you went through, and how in looking at a brownfield, the issue of uncertainty that you were faced when—even if you do have the luxury of time, the financial analysis of a project is limited by the information that you have on a Phrase I and you proceed with caution. If you would speak on those two topics.

Mr. MACHASKEE. Sure. First of all, I think that it was somewhat surprising to us that looking at our criteria for what we needed, and we needed at that time at least 35 to 40 acres, and we needed rail access so that we could ship in newsprint, we needed access to major freeways, and it also had to have some utility considerations as well as be central to our distribution system.

When you put those factors together, the city of Cleveland at that time was only able to offer up two locations, and one right off the bat we rejected because it was 21 acres. And in order to get an additional at least 10 acres, we would have had to be on someone else's timeline, relocate another company that had 200 employees, and plus there were utility and environmental considerations there.

So the focus became then on a site that had 47 acres, close to a freeway, and had rail, so it had some of the major components.

The Phase I environmental shows $6 to $7 million of remediation work. At the time of that Phase I environmental and with the owners of that property, we had to sign a confidentiality agreement as to what the Phase I environmental problems uncovered. So I won't talk about that.

I can only tell you that ultimately we bought 88 acres in Brooklyn, more than we needed, because, first of all, the price was half as much per acre as what was being purported to us on the 47-acre site. With the greenfield site I didn't have to be concerned with underground storage tanks, defunct sewer lines with toxic waste in them, or PCBs.

Now, once again, as I said in my opening remarks, if it was a matter of $6 or $7 million and everything else fell into place, you might consider that into the overall cost. However, in building the new plant, we were purchasing four printing presses at a cost of $66 million. Ultimately, an installation cost of $7 million. Plus, we were purchasing packaging equipment in the amount of $44 million.

Now, when you're buying that kind of equipment, first of all, you're going to want to get it installed as soon as you can and operational to benefit from the cost efficiencies of producing in the modern plant. Second, the people that want to sell you this stuff aren't going to hold it up because you discover some additional problems in the soil. And then that raises that big question, what do you find once you start the excavation and what do you do with what you find? And those were very murky areas for us.

And ultimately, we had to make the decision that we made to go to Brooklyn on the greenfield site and then, because we feel strongly about the city of Cleveland, come back a few years later and invest in a downtown office building where we made a $38 million investment and we still have 1,000 employees in Downtown Cleveland.

Mr. TURNER. Thanks. Mr. Davis, one of the elements of the legislation that we've put forward encourages participation from the past pollutant, encourages them to come to the table because, a, they have information that maybe you need about the site that you wouldn't know otherwise unless they were there.

And, b, there's an awful lot of these properties that past polluters still control or influence their outcome. And we think that by encouraging them to come to the table that they'll bring properties that communities want to develop or have currently been locked up in abandoned sites.

Could you tell me about some of your experience in working with past polluters and their views and interests, and what type of current incentives do you see to get a past polluter to come to the table and assist in the redevelopment.

Mr. DAVIS. I think it's a great question. I've had a lot of experience, as you can imagine, working with PRPs, people who are perceived to have created or actually did create those issues historically.

Perhaps, you know, in Diamond Shamrock's case, it was created in the twenties, thirties, forties, which preceded most of the environmental laws. They didn't perceive at the time that they were doing anything that was out of the ordinary in terms of ordinary business. But, after the advent of Super Fund, obviously, the cost associated with redeveloping those issues fell onto their laps, and appropriately so.

I think that what you find as we negotiate now with people trying to unlock brownfield opportunities is that, especially in big

companies, they're still very, very hesitant, because they're afraid to kind of open up the information publicly.

We're currently negotiating in your hometown of Dayton with a company that, you know, I can tell you is somewhat hesitant with respect to entering into the public domain and the public process. Although, I know their intentions are pure and they want to do what's right for the community and they want to see the site remediated.

I think that there are a number of corporations that fit into that model, but because there's a lack of predictability, there's a significant lack of people who understand how to go through this mine field of different funding and the legal and demolition and environmental issues all at the same time, that their experiences are mixed.

So, you know, from my perspective, it's not about leveling the playing field, it's about helping the playing field. It's tilting the playing field so that it's such a good deal for companies and communities to do brownfield redevelopment, that it's not an issue. People want to be doing this.

And I also believe that, while we've got great people in the public sector, whether they're the city, county, State working on these issues, and we have some of the most talented people in the country working in Ohio, fortunately, the private sector has to be the leader in getting these deals done. There's only so much, there's a limited amount of grant dollars that will ever be available for brownfield redevelopment.

We're in an era where funding is being cut for regulatory programs, at Federal EPA, at Ohio EPA. You name the government sector, funding is being cut. So in order to encourage the private sector, whether it's companies, private developers, anybody, to work cooperatively to getting these deals done, at the end of the day we've got a clean piece of property that can be reused. That's what we want and that's what we should encourage.

Mr. TURNER. Mr. Stone, you mentioned the topic in your testimony that I would like you to speak more on, and that is the issue of the blighting influence of brownfields. When we miss the opportunity of redeveloping a brownfield site, of course we miss the jobs that could be on that site and we miss the potential capital investment on that site. But, another important aspect that you mentioned was the impact of brownfield on the surrounding property and its decline to attract capital. Can you speak about that.

Mr. STONE. I think that's a major issue that we look at. A number of these smaller brownfields sites are located in neighbors and communities, certainly throughout this city, around the country.

The site that I have mentioned specifically is located just adjacent to a beautiful urban park, Luke Easter Park, which we have right to the north of it. We have tennis courts, we have baseball diamonds, we have a track. And actually, the individuals and children have the ability to, you know, wander off into the site. So these are challenges for us when we have blighted conditions.

And certainly my job in my organization is to redevelop or to change the physical appearance of some of these, some of our more challenged neighborhoods. And so when you've got a site of this size that's unproductive, that's blighted, it really takes away our

ability to certainly market either a housing redevelopment situation or, in this case, economic development of jobs. So that blight cannot be underestimated.

If we're going to be able to market or bring companies back to the area, the first thing actually is what's the condition, what do they see. And in a lot of cases that turns them off right there, not even getting to the cost. So in just getting also to the point of, you know, we just miss something when in my case it's a matter of trying to market a site when it's not ready.

We've had in this case three entities that were looking for a site in the area, bringing new jobs. But when we tell them basically there's a time horizon of basically 18 months to 2 years before we could even potentially clean the site, they're saying, thanks but no thanks.

Businesses are looking at when they want to put in a new store, where they want to create a facility. They're just looking for the available site. So if we can only present them with the opportunity of, well, in 2 years we might have something available for you, then we continually miss these opportunities. So blight is a major issue with communities, but also this missed opportunity.

Mr. TURNER. Ms. Tubbs Jones.

Mrs. JONES OF OHIO. Thank you, Mr. Chairman. In your written statement, Mr. Stone, you said that the problem with brownfield redevelopment is having to have an identifiable user in order to do the redevelopment. Are you suggesting that you as a non-profit are going to be able to do the remediation and then sell it or develop it with someone else.

Mr. STONE. Certainly we would like to do that. In the current site we are now working and we have been initially approved for a loan with the city of Cleveland to acquire the site. What that will allow us to do and we're working on now is a development project with an actual end user. As I mentioned in my comments some 2 years ago, a year and a half ago, when we made an initial application to the assistance funds with the State of Ohio, we did not have an end user identified. We've been working through that process. As I said, it's marketing, trying to find cleanup funds.

Mrs. JONES OF OHIO. Basically my question is: Would you want to be the identified person until you got ready to develop for someone else? Is that what you're asking that you ought to be able to do?

Mr. LATOURETTE. I think we would be willing to do that as a community development corporation.

Mrs. JONES OF OHIO. That's what I mean, as the community.

Mr. STONE. Right. We play that role. We look at our service as the table setters and we're going to acquire the prep settings. In this case there's a lot of liability and the need for funding to clean the site. But we have to be in a position that we have available sites. So we would hold those sites. We can develop it ourselves or be in partnership with an entity to develop.

Mrs. JONES OF OHIO. Mr. Davis, based on the experiences that you've had with representing and litigation on those kinds of issues, what would be the downside to a non-profit being able to hold a piece of property as an identifiable owner for cleanup? And what would be the upside.

Mr. DAVIS. I think the only downside from my perspective is that it's a non-profit instead of a for-profit. I mean, I think most certainly it's a great idea.

And just following on some of the earlier comments about the Plain Dealer, and particularly with respect to that issue, to the extent that we had the ability to go in, and I think you're referring to the Collinwood yard site initially, which is a site that we actually worked on, I think, subsequent to the Plain Dealer's involvement in that site. Had we had the ability——

Mrs. JONES OF OHIO. That's where Sodexho is now.

Mr. DAVIS. Yes. The Food Bank.

Mrs. JONES OF OHIO. Right.

Mr. DAVIS. But had we had the tools back then that we have now, had we had the foresight, the wherewithal and somebody who is willing to go in and address those issues, perhaps the Plain Dealer would have been there; while we wouldn't have had an end user necessarily in mind, we would have, as you've said, we would have set the plate. We would have set the tabletop.

We went in. End users want a clear, clean, fully remediated piece of property that they can build on in the inner city or wherever as quickly as they can. They don't want to deal with environmental issues. They don't want to know about environmental issues. They want to make sure that their site is competitive with a greenfield site.

And I don't blame them, because it's not worth it to a business person, even a great community-minded business person, who has the best interest of the toughest areas in mind. They have to make a business decision and it's got to be in their best interest to do that.

Mrs. JONES OF OHIO. Thanks, Mr. Davis.

Really quickly to Mr. Franz. Do you want to add something?

Mr. MACHASKEE. Could I just add something to that.

Mrs. JONES OF OHIO. Yes, please.

Mr. MACHASKEE. It's a hypothetical, but I think it will make the point.

We all know that the Cleveland Clinic, University Hospitals use an awful lot of Johnson & Johnson products. Supposing that a team is put together to go after Johnson & Johnson and say, look, why don't you come closer to your customers and put something in the inner city of Cleveland, create jobs and supply all those gauzes and everything else that you manufacture to these medical institutions. What would the city of Cleveland offer them? We don't have it. That's the point.

Mrs. JONES OF OHIO. We have to come up with something.

To Mr. Franz and Mr. Kasper, my time has kind of run out, can you identify one project that you've worked on and tell me what community was in, what was there before you worked on the project, what kind of jobs and income came as a result of your redevelopment. One each.

Mr. FRANZ. One of the more recent ones that we worked on actually was unique, what we call vertical brownfields. It was not a demolition of a facility. It was basically the cleanup and remodeling of what is called the Fort Piqua Hotel.

Mrs. JONES OF OHIO. That is——

Mr. FRANZ. In the city of Piqua. That's what it was, it was an old hotel. In that particular instance, the site had been used for everything from a hotel back in the 1840's, all the way through apartments, as well as currently had a sports bar in the basement at the moment.

The city of Piqua as part of their brownfields redevelopment wanted to take the hotel and convert it into a space that could be used for their library and also for a number of senior citizen services. So basically that's what we did. We went in and did the assessment, submitted the findings and as well as our application for a Clean Ohio Fund.

Mrs. JONES OF OHIO. What did it cost.

Mr. FRANZ. For the assessment work?

Mrs. JONES OF OHIO. For the cleanup.

Mr. FRANZ. For the cleanup, total cost including the assessment, was probably about a half a million dollars.

Mrs. JONES OF OHIO. I'm cutting you off because I'm running out of time. Mr. Kasper.

Mr. KASPER. I would normally talk about the $1.2 billion investment, the DaimlerChrysler facility in Toledo, OH. But besides everyone being sick of hearing about it if you spend $1.2 billion on brownfield, issues go away pretty quick.

I would like to concentrate or make a few remarks about a project in Springfield, OH, about 45 minutes west of Ohio. And industrial city of a little under 70,000 people. And several years ago we took a very small brownfield, about 4 or 5 acres on the edge of Buck Creek, beautiful area right in the middle of the industrial corridor, and did some demolition and cleanup. We used both State and Federal money. Ohio EPA and U.S. EPA were great partners in that project, as well as the leadership from the city of Springfield. And about 6 months ago they opened up a regional cancer treatment facility there.

It's a great story. Hopefully it will be a winner in the Phoenix award when they make the application this year. But that's brought leverage for that city. That community pulled together two hospitals that are recently merged and that were looking at taking both the campuses outside of the city and working very hard to bring them near their regional cancer center, using that leverage and bring them back to the urban core. So we're excited to see that happen and worked very hard for that success.

Mrs. JONES OF OHIO. Thank you very much. Mr. Chairman, I'm going to excuse myself and try and make this other event where it's the new redevelopment in the 11th Congressional District. I thank you for bringing the hearing here.

Mr. LATOURETTE. Thank you, Mr. Chairman. Just a couple of housekeeping matters. I think, Mr. Chairman, you mentioned earlier that Congressman Kucinich is involved in the DFAS matter that Ms. Tubbs Jones was involved in as well.

And then in addition, at the beginning of the hearing I talked about the article that appeared in yesterday's News Harold relative to the exciting project that Mr. Davis is involved in out in Lake County. And he corrected me during our break and indicated that in the Plain Dealer Sunday Magazine there was also a very nice article that had to do with the grapes that we were talking about

a little earlier, that they're growing on the old soup pond. And I don't know if that article is written by their outstanding environmental reporter, John Keener, but I do know that Mr. Keener writes about the environment and does like grapes.

The second thing that I wanted to talk about a little off the subject, but I feel constrained to do it, because one of my other hats is to serve as the Railroad Subcommittee Chairman on Transportation and Infrastructure. Mr. Machaskee was talking about the importance of being near rail lines in relocating a business site and the challenges being faced by brownfield redevelopment.

And I have to tell you that I became aware last week that some people in the City Council in Cleveland are attempting to pass not in my backyard legislation, which would cause rerouting of all Norfolk and CXS trains so they don't travel through the city of Cleveland if they had materials that these councilmen would feel objectionable.

And I would just say, if you're upset about what happened with the service office, if you don't like what happened with DSAF, if you're nervous about the 700 jobs still out on the line at NASA Glenn, one way to shut down the city of Cleveland is to engage in this silly knee jerk not in my backyard legislation.

Having said that, Mr. Davis, you, I think, talked about the good, bad and ugly. And I think Mr. Machaskee's story on the Plain Dealer is important because I represent a lot of greenfields east of the city. You're to be commended for what you're doing on the brownfield site in Fairport Harbor.

There is this notion that it's the greedy corporate giants that have no loyalty and so they're fleeing the city. And I think with the Plain Dealer, where they tried and didn't succeed, it's illustrative of the fact that isn't the case.

And what I wrote down is, you know, you talked about the good, but when we got down to bad and ugly, and I have to tell you, I haven't finished your book yet, but I still have it. But you still say, you say that it takes way too long to get these deals done. What are the impediments that you continue to see to make these deals take too long and what is your opinion of Mr. Turner's legislation in terms of resolving some of those?

Mr. DAVIS. Some of the reasons it takes too long is, just to give you an example with respect to our project, the first letters that we sent to the company seeking our involvement in trying to get in and volunteer to be the redeveloper there were sent in 1997. It took us, to your point, Chairman Turner, about 4 years to convince Diamond Shamrock and the successor to Diamond Shamrock that there was a credible team that could go in and actually make a deal like this happen. That was before there was any public involvement whatsoever.

So behind the scenes it typically takes a number of years to just convince companies that it's worth their while to take a chance on doing these projects. Then when you get into the formal process, it's about making sure that we're lining up all of the regulatory issues at the same time we're lining up our financing issues.

And if you're relying solely and exclusively on grant funding cycles, it's very hard to make those schedules work. And typically, the limit on grant funding itself, you know, Clean Ohio, which is

clearly the leading grant program in the country, has a per project limit of $3 million per project.

So when you put that in the context of the Lakeview Bluffs redevelopment, where the numbers, the cleanup numbers are far more than $6 to $10 to $12 to $20 million ultimately, while certainly important money, just one level of the financing.

I think in terms of what Congressman Turner's bill would do, again, if you shift the incentive to private marketplace and you come up with a self-implementing private tax program, and you're doing it as a percentage of cleanup costs, cleanup costs defined by, you know, however the final definition comes down, then you can actually raise those limits of private investment and shift the pace dramatically.

So I think that's another hidden advantage that people might not recognize that's just really an advantage to the bill.

Mr. LATOURETTE. With respect to the letters that you sent out in 1997, not only to the brownfields Super Fund site, I mean, legislative solutions prior to Mr. Turner's, didn't they sort of encourage companies to hunker down and lawyer up rather than coming forward, coming to the table?

Mr. DAVIS. There's absolutely no question about it. I mean, being an environmental lawyer, having made my limit in living for years before this as part of that litigation trough, I can tell you that nobody wants that scenario. The companies don't like it. I think that the only people who like it probably are the lawyers. I know we're not a sympathetic bunch.

So from that perspective, the policies made no sense. And I think if you look at these sites pragmatically and not worry about blaming different people about what happened historically and focus on what we want to accomplish, it's end use versus process. And that's the way to get a meaningful shift in redevelopment projects.

Mr. LATOURETTE. Probably the reason why the only people that have more jokes about lawyers are politicians.

Mr. Franz and Mr. Kasper, both of you talked about getting a return of cost of investment. I would just ask you, based on your experience, and Mr. Davis, too, if you want to jump in, is there a rule of thumb that companies look at, and the Plain Dealer, Mr. Machaskee talked about maybe $6 or $7 million, if that's where it all ended, is there a rule of thumb that you're aware of that businesses take a look at when they're looking at a brownfield in terms of what's going to be the return on my investment. And, again, if you've had a chance to look at Mr. Turner's bill, does that help ease minds of those that would make those investments?

Mr. KASPER. As far as actual, what type of return, I think I can pass that over to Mr. Davis. But definitely, you know, when I see private sector properties, they're coming in with their basis in the property. And they know they're in a brownfield, they're going to spend more money and try to figure out, how do they take the upside down project and right it. So you have that issue right there. So just a net zero to start off is the first hurdle.

The other issue we heard of is the uncertainty that's been spoke of. So if they go into this thinking the basis is a million dollars on a 10-acre property. So if they have $100,000 an acre, in addition to anything else, and it's $3 million, that doesn't end up good for

anyone. So it's not just a matter of understanding what type of return they're getting, it's really trying to understand how do they take care of the uncertainty and the risks and maybe how to transfer those risks.

As far as what Chairman Turner is proposing, I think, as I said in my written testimony, any Federal incentives that can help, again, right those upside down projects would certainly be very valuable for redevelopment.

Mr. LATOURETTE. Mr. Franz, do you want the jump in?

Mr. FRANZ. Basically economics drive the project no matter what. So if the economics are negative, the project is not going to go forward. It's relatively—it's simple from where I stand.

Mr. LATOURETTE. Do you think that, as Mr. Kasper suggested, that a zero return is enough for people, or do they need to do better? I would hope that Mr. Machaskee's property out in Brooklyn is going to appreciate a little over the next couple years and is not going to be worth the same as he paid for it. Don't people have the opportunity to expect that as well?

Mr. FRANZ. Yes.

Mr. LATOURETTE. OK. Mr. Chairman, thank you very much.

Mr. TURNER. I want to thank all of you for participating and, again, giving your perspective in working on these issues. This will become part of our larger testimony that we've been taking on what is the Federal response, how are our programs working, what other tools do we need in the toolbox, and then specifics of reactions to the tax credit bill and ways in which we might be able to assist communities.

Before we conclude, I want to give each of you an opportunity, if you have any concluding remarks or anything else that you would like to add for the record.

Mr. MACHASKEE. Thank you, Mr. Chairman. As an observer in Cleveland and being with the Plain Dealer for some 25 years, certainly I have observed the Greater Cleveland as a shrinking market for many years. It's been well-documented that our out migration is greater than our in migration. And we've had a significant loss of jobs, particularly in the last 4 or 5 years.

And along with that comes the reduction in spending power, discretionary spending power, and that hurts all businesses and all providers of goods and services. So we need people, we need people to come here. But what are they going to come to? They need to come here because we have jobs. And the only way we're going to get more jobs here is to be able to attract business investment, either a new business investment or business extension.

And, therefore, this brownfields remediation legislation that you're proposing, I think, is very key to that, to attract business. And so I want to applaud you, Mr. Chairman, and your subcommittee for all the work that you're putting into it.

Mr. TURNER. Any other comments?

Mr. STONE. Thank you, Mr. Chairman. I just wanted to emphasize, and I said earlier to you that I'm here sort of representing the little people in, as you mentioned, blighted conditions in neighborhoods. And in a lot of cases these are projects or sites that are much smaller in size, somewhat fall below the radar screen, but clearly you have them sitting in the middle of neighborhoods.

The one that I mentioned is in one of the most densely populated areas in the city of Cleveland. So you have existing homeowners and residents of that, you know, to some extent in the low income situation, really don't have many other options, so they're there. And so we continue to see situations that they don't really have the remedies to get rid of something that's very detrimental to their own health and well-being. And, again, it's a missed opportunity as it relates to job creation.

So as I think about your legislation, and I don't have full knowledge of it, when we think about tax credit, compare that to what's been done through the deposit tax credit program, which I think is the best program that's been established for the creation of affordable housing that's been responsible for the government, and now we have the new markets tax credit. We see these projects, we see this type of legislation very effective in creating incentives.

So I would applaud you that this is another way in which private investment can be attracted to these challenged sites and these challenged areas, so thank you.

Mr. TURNER. Gentlemen, any other comments?

If not, I want to thank Case Western Reserve University for obviously being our host. They've been very helpful in our being able to pull this together and to be here today. I want to thank all of the people who have come to hear the testimony. And also Mr. LaTourette, I greatly appreciate his assistance in being able to pull this hearing together, and the attendance of Ms. Stephanie Tubbs Jones. Thank you.

We're adjourned.

[Whereupon, the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

OhioEPA
State of Ohio Environmental Protection Agency

STREET ADDRESS:
Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:
P.O. Box 1049
Columbus, OH 43216-1049

June 22, 2005

The Honorable Michael Turner
Chairman
Committee on Government Reform
Subcommittee on Federalism and the Census
B-349 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Congressman Turner:

I would like to thank you for affording Ohio EPA, and myself in particular, the opportunity to testify before the Subcommittee on Federalism and the Census at the field hearing that was held at Case Western Reserve University in Cleveland on May 16, 2005. As the manager of the Voluntary Action Program, Ohio's brownfields voluntary cleanup program, I am very appreciative of the Subcommittee's efforts to provide additional incentives to individuals who have the courage and willingness to cleanup underutilized, potentially contaminated properties and create opportunities and employment where loss and hardship once existed. The Subcommittee and you, as Chairman, should be commended for your exceptional efforts.

Regarding my testimony on May 16, I wanted to make you aware of a mistake in the testimony transcript that should be corrected. Ms. Shannon Weinberg, counsel for the Subcommittee, pointed out that when I referred to the Clean Ohio Fund during my testimony, I said that the Fund had provided over 200 million in revitalization funding. I spoke incorrectly and that figure should be over 75 million in revitalization funding. Ms. Weinberg was kind enough to fax me the testimony section where the incorrect figure was recorded. You will find the mistake on page 13 of the field hearing testimony.

Thank you for allowing me the opportunity to correct the hearing record. I apologize for any inconvenience this may have caused you or the Subcommittee. Again, thank you for the opportunity to testify and if I can be of any assistance in the future, please feel free to contact me.

Sincerely,

Amy R. Yersavich

Amy R. Yersavich, Manager
Voluntary Action Program
Division of Emergency and Remedial Response

cc: Shannon Weinberg, Counsel
Subcommittee on Federalism and the Census

Cindy Hafner, Chief
Division of Emergency and Remedial Response

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
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