

# The TAB Program

## Technical Assistance to Brownfields

Sabine E. Martin, Ph.D., P.G.

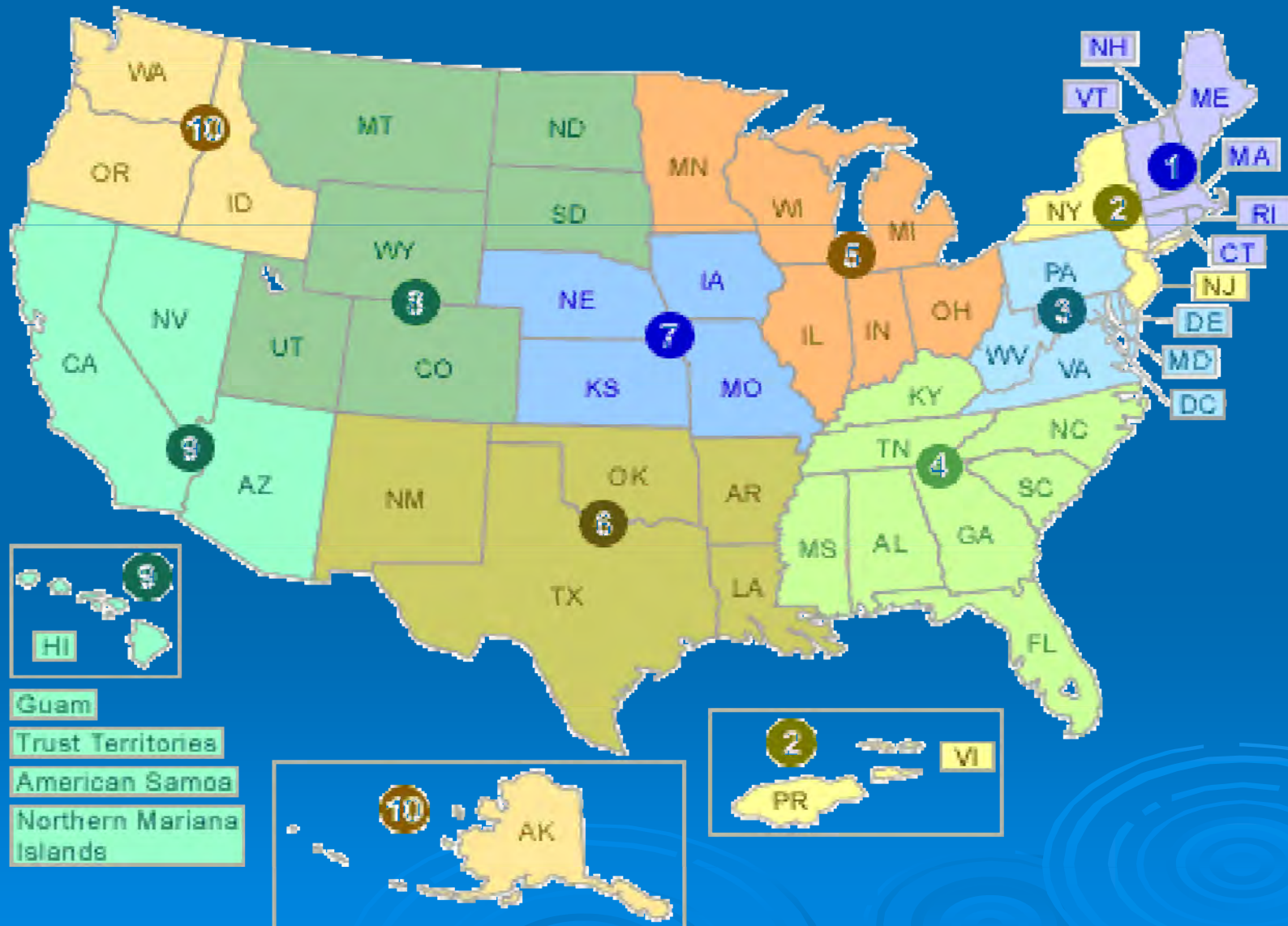
Center for Hazardous Substance Research  
Kansas State University  
August 2010

# Technical Assistance to Brownfield (TAB) Communities

- A national program
- Funded by EPA headquarters via grants to 4 different entities
- **Free** to communities
- K-State assists communities in EPA Regions 5 and 7




# EPA Regions



# TAB Assistance to Communities

- Tailored to specific community needs
- Typically coordinated through the city, tribal or non-profit brownfields project manager
- May include:
  - Help identifying funding sources for revitalization projects
  - Review of EPA and other grant applications
  - Help finding a consulting firm
  - Review of project plans, technical reports
  - Assistance with community outreach/involvement
  - visioning
  - Other assistance, as needed and agreed upon
- Communities accepted on a 'first come' basis
- Depends on staff/funding availability

# The Application Process

- Contact us
  - We'll set up a meeting to discuss assistance needs
  - Review needs and TAB capability
  - Agree on a course of action
  - Get started
- 

# Workshops/Training Sessions

- Tailored to the information needs of the community
- Relaxed atmosphere
- Time for networking
- Variety of presenters
- Hands-on segments
- Very effective !



# Community Outreach

- Redevelopment Planning



# Visioning





# Visioning



# Visioning



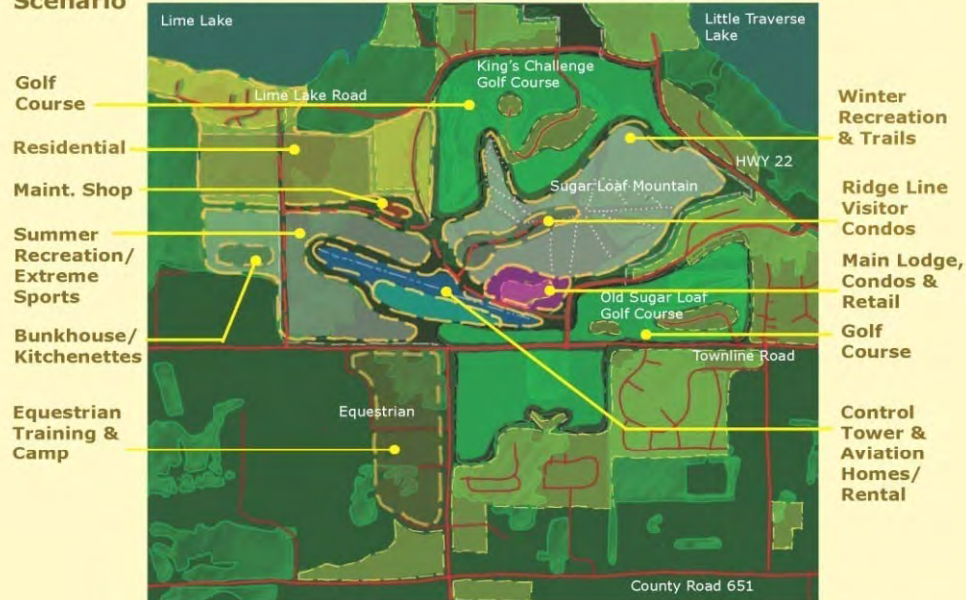
# Visioning



6/24/2008 6:59

# Potential Redevelopment Scenario #1: Leelanau County Resort Center

County-wide focused redevelopment.



Golf Course

Residential

Maint. Shop

Summer Recreation/  
Extreme Sports

Bunkhouse/  
Kitchenettes

Equestrian Training &  
Camp

Winter Recreation & Trails

Ridge Line Visitor Condos

Main Lodge, Condos & Retail

Golf Course

Control Tower & Aviation Homes/Rental



The scenario plan and concept sketches are based on public input, are intended to be flexible, and provide a tool for continued dialog.

Main Lodge & Condos



Retail & Spa Center

Bunkhouse/Kitchenettes



Control Tower & Air Strip

recreation four seasons jobs agricultural heritage green construction local economy  
Technical Assistance to Brownfields Communities Program at Kansas State University. Summary of Leelanau County Visioning Sessions August 2009



NO  
TRESPASSING



# Technical Presentations

- Community Meetings



# Community Involvement

- Who is the Community?
- Why do it?
- Successful Involvement Techniques





# Community Involvement Tools

## Fact Sheets, Citizen Briefs

- clear
- concise
- in layman's terms
- basic information
- provide contact info and additional resources

**Note: NOT a stand-alone tool**

# Community Involvement Tools

## Community Outreach

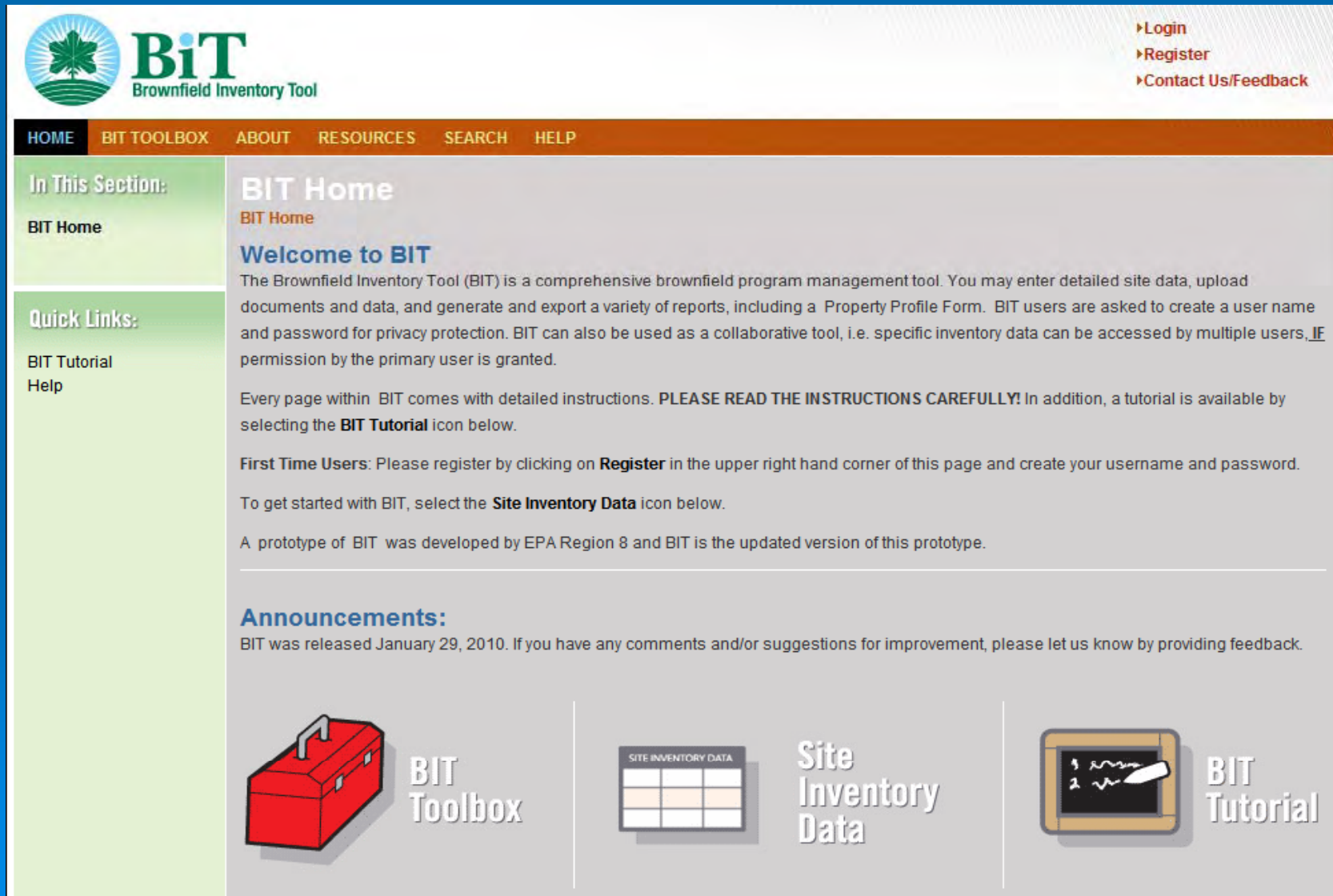
- Community Day/Fair
  - Bus Tours
  - Walking Tours
  - Workshops/Seminars
  - Public Meetings
- 

If you feed them, they will come



# Special Projects

Web - based software: TAB-BIT  
[www.tab-bit.org](http://www.tab-bit.org)



The screenshot shows the BIT website homepage. At the top left is the BIT logo, which features a green maple leaf inside a circular sunburst, with the text "BiT Brownfield Inventory Tool" below it. To the right of the logo are three links: "Login", "Register", and "Contact Us/Feedback". Below the logo is a navigation bar with the following items: HOME, BIT TOOLBOX, ABOUT, RESOURCES, SEARCH, and HELP. The main content area is divided into two columns. The left column has two sections: "In This Section:" with a link to "BIT Home", and "Quick Links:" with links to "BIT Tutorial" and "Help". The right column has a "BIT Home" heading, followed by a "Welcome to BIT" section. This section contains a paragraph describing the tool, a paragraph about instructions and a tutorial, a paragraph for first-time users, and a paragraph about the prototype. Below this is an "Announcements:" section with a paragraph about the release date. At the bottom, there are three icons with labels: a red toolbox for "BIT Toolbox", a grid icon for "Site Inventory Data", and a chalkboard icon for "BIT Tutorial".

**BiT**  
Brownfield Inventory Tool

▶Login  
▶Register  
▶Contact Us/Feedback

HOME BIT TOOLBOX ABOUT RESOURCES SEARCH HELP

**In This Section:**  
BIT Home

**Quick Links:**  
BIT Tutorial  
Help

## BIT Home

**Welcome to BIT**

The Brownfield Inventory Tool (BIT) is a comprehensive brownfield program management tool. You may enter detailed site data, upload documents and data, and generate and export a variety of reports, including a Property Profile Form. BIT users are asked to create a user name and password for privacy protection. BIT can also be used as a collaborative tool, i.e. specific inventory data can be accessed by multiple users, if permission by the primary user is granted.

Every page within BIT comes with detailed instructions. **PLEASE READ THE INSTRUCTIONS CAREFULLY!** In addition, a tutorial is available by selecting the **BIT Tutorial** icon below.

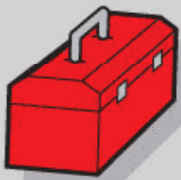
**First Time Users:** Please register by clicking on **Register** in the upper right hand corner of this page and create your username and password.

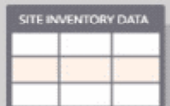
To get started with BIT, select the **Site Inventory Data** icon below.


A prototype of BIT was developed by EPA Region 8 and BIT is the updated version of this prototype.

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**Announcements:**  
BIT was released January 29, 2010. If you have any comments and/or suggestions for improvement, please let us know by providing feedback.

 **BIT Toolbox**

 **Site Inventory Data**

 **BIT Tutorial**

# TAB-BIT


## Brownfields Inventory Tool

- Released January 29, 2010
- Free, web-based and desk-top version
- Desk-top version to be released later this year

# Background

- Prototype developed by EPA Region 8
- Intended to help Response Grant, and other brownfields grant recipients with survey & inventory, public record, oversight & enforcement, assessment and cleanup, and administrative reporting requirements
- Tool became obsolete due to MSWindows upgrades

# BIT Features

- Password protected
  - Multiple users possible, if permission is granted, or “read only” feature
  - Database
  - Import/export function
  - Search function
- 

# What can TAB-BIT do?


## Data Management:

- Brownfields related data
- Other environmental data
- Track funding
- Upload documents or enter data directly
  - Site information
  - Redevelopment data



# What can TAB-BIT do? Cont.

## Data Management:

- Program admin. data
  - Enforcement documentation
  - Complaints
- 

# What can TAB-BIT do? Cont.

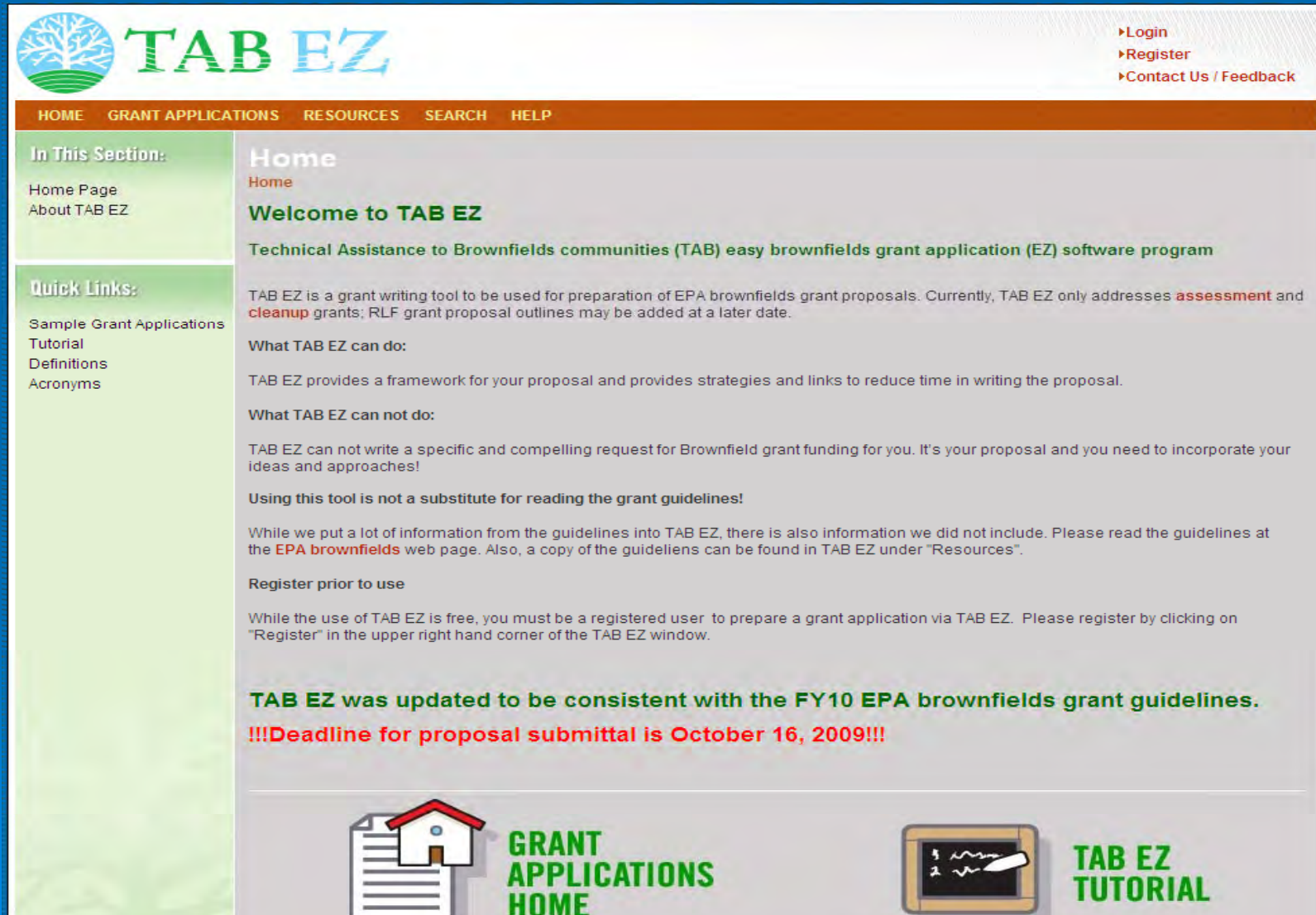
## Report Generation:

- Property Profile Form (e-submit to ACRES)
- Quarterly report form (outline)
- Forms for enforcement, complaints, ICs, inspection/oversight, public record reports, etc.
- Customized reports
- Maps

# Special Projects

Web - based software: TAB EZ

www.tabez.org



The screenshot shows the home page of the TAB EZ website. At the top left is the TAB EZ logo, which consists of a stylized tree icon and the text "TAB EZ". To the right of the logo are links for "Login", "Register", and "Contact Us / Feedback". Below the logo is a navigation bar with links for "HOME", "GRANT APPLICATIONS", "RESOURCES", "SEARCH", and "HELP".

The main content area is divided into two columns. The left column has two sections: "In This Section:" with links for "Home Page" and "About TAB EZ"; and "Quick Links:" with links for "Sample Grant Applications", "Tutorial", "Definitions", and "Acronyms".

The right column contains the main text of the page. It starts with the heading "Home" and "Welcome to TAB EZ". Below this is a sub-heading: "Technical Assistance to Brownfields communities (TAB) easy brownfields grant application (EZ) software program". The text explains that TAB EZ is a grant writing tool for EPA brownfields grant proposals, currently addressing assessment and cleanup grants. It lists what the tool can and cannot do, and provides instructions on how to use it, including a registration requirement. A prominent announcement states: "TAB EZ was updated to be consistent with the FY10 EPA brownfields grant guidelines. !!!Deadline for proposal submittal is October 16, 2009!!!".

At the bottom of the page, there are two icons: a house icon labeled "GRANT APPLICATIONS HOME" and a chalkboard icon labeled "TAB EZ TUTORIAL".

# WHY TAB EZ?

- Levels playing field for small/ rural communities, disadvantaged cities and towns and not-for-profits
- Tool is time and place independent: flexibility critical to community resources that are stretched to capacity

# Features and Benefits to Users

- User friendly and can be accessed anytime at the user's own pace
- Integrates Brownfield education with online support: definitions, regulatory citations and pertinent federal/state web links
- Helpful Hints for every criteria to be addressed

# What TAB EZ CAN and Can NOT do

## *TAB EZ can:*

- provide a framework for the community's proposal
- provides strategies and links to reduce time in writing the proposal

## *TAB EZ cannot:*

- write a specific and compelling proposal for you  
**It's your proposal!**

TAB EZ is NOT a substitute  
for reading the grant  
guidelines!!!



# TAB Contacts

Dr. Sabine Martin (Program Coordinator)

1-800-798-7796

785-532-6519

[smartin1@k-state.edu](mailto:smartin1@k-state.edu)

Beth Grigsby

317-579-4069

[beth.grigsby@atcassociates.com](mailto:beth.grigsby@atcassociates.com)

Web site: <http://www.engg.ksu.edu/chsr/outreach>





# Community Programs

Welcome



Committed to the future of rural communities.

Indiana

# Rural Development

## United States

# Department of Agriculture

Gregg Delp  
Director of Community Programs



# Rural Development

- Improving the quality of life of all rural Americans
- Increasing economic opportunity in rural America



# Community Programs

- Community Facilities
- Water and Environmental Programs
- Electric and Telecommunication Programs
- Faith-Based



# Community Facilities

## Program Objective

- Provide funding to public bodies, federally recognized Indian tribes and non-profit organizations using three funding sources
  - Guaranteed Loans
  - Direct Loans
  - Grants



# Community Facilities

## Purpose

- Construct, enlarge, extend or otherwise improve essential community facilities providing essential services in rural areas



# Community Facilities

## Eligible Areas

- Areas with a population of 20,000 or less which includes:
  - Cities
  - Towns
  - Unincorporated Areas



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# Community Facilities

## CF Guaranteed Loans

### Rates

- Negotiated between lender and borrower
- Fixed or variable

### Terms

- 40 years maximum





# Community Facilities

## CF Direct Loan

### Rates

- 4.00 %

### Terms

- 40 year maximum or life of the facility



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# Community Facilities

## CF Grants

- Only to projects without financial capacity
- Average grant is less than \$30,000 (nationally)
- Larger grants to smaller communities with lower median household income

% of Total

Project Cost

Population

Median Household Income (MHI)

75%

Less than 5,000

60% or below the statewide MHI

55%

Less than 12,000

70% or below the statewide MHI

35%

Less than 20,000

80% or below the statewide MHI

15%

Less than 20,000

90% or below the statewide MHI



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SNMHI \$44,459

# Examples of Community Facilities

## Community Health Care

- Hospital
- Critical Access Hospital
- Dental Clinic
- Nursing Home
- Assisted Living Facility
- Physicians Clinic
- Rehabilitation Center
- Psychiatric Hospital
- Outpatient Clinic



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# Cultural & Educational

- All Purpose Buildings
- Colleges
- Educational Camp for Physically & Mentally Impaired
- Library
- Museum
- Outdoor Theatre
- Public School
- School Maintenance & Equipment Service Center
- Vocational School



# Energy Transmission & Distribution

- Electric Equipment
- Maintenance Bldg.
- Low Head Hydro
- Electric Facility
- Natural Gas Distribution



# First Responders

## Fire, Rescue, & Public Safety

- Civil Defense Building
- Communications Center
- Fire Department Building
- Fire Trucks
- Jail
- Multi-Service Fire/Rescue Building
- Equipment Building
- Jaws of Life
- Turn Out Gear
- Mobile Communications Center



# Community Support Buildings & Improvements

- Adult Day Care Center
- Child Day Care Center
- City Hall
- Community Health Department
- County Office Building
- Community Center
- County Courthouse/Annex
- Data Processing Center
- Food Preparation Center
- Food Storage and Distribution Center
- Home for Troubled Youth
- Public Maintenance Building



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# Transportation

- Airport Hanger
- Airport
- Bridge
- Municipal & County Garage
- Offstreet Parking
- Sidewalks
- Street Improvements
- Rural Transportation
- Infrastructure for Industrial Park
- Railroad
- Town Bus
- Service/Equipment
- Marina
- Municipal Dock
- Special Transportation Equipment



# Other

- Fairgrounds
- Animal Shelter
- Levee/dike
- Oceanfront Protection
- Special Services Building
- Sprinkler System
- Telemedicine / Distance Learning









COMMUNITY HOSPITAL, BREMEN, INDIANA—"A GOOD TOWN"



Proposed Replacement Facility for The Community Hospital of Bremen  
Exterior View of Hospital Entry



# Water and Environmental Programs

## Program Objective

- Provide funding to public bodies, federally recognized Indiana tribes and non-profit organizations
  - Guaranteed Loans
  - Direct Loans
  - Grants – only in combination with loans to lower user rates comparable with similar systems



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# Water and Environmental Programs

## Purpose

- Construct, enlarge, extend or otherwise improve utility service in rural areas
  - Water
  - Wastewater
  - Solid waste
  - Storm water
  - Solid Waste Management Grants



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# Water and Environmental Programs

## Eligible Areas

- Areas with a population of 10,000 or less which include:
  - Cities
  - Towns
  - Unincorporated Areas
    - Counties
    - Regional sewer/water districts
    - Conservancy districts and water authorities



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# Water and Environmental Programs

## WEP Direct Loan

### Rates

- 2.375 to 4.00 %

### Terms

- 40 years maximum



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# Electric and Telecommunication Programs

- Distance Learning and Telemedicine
- Rural Broadband Access
- Electric
- Telecommunication

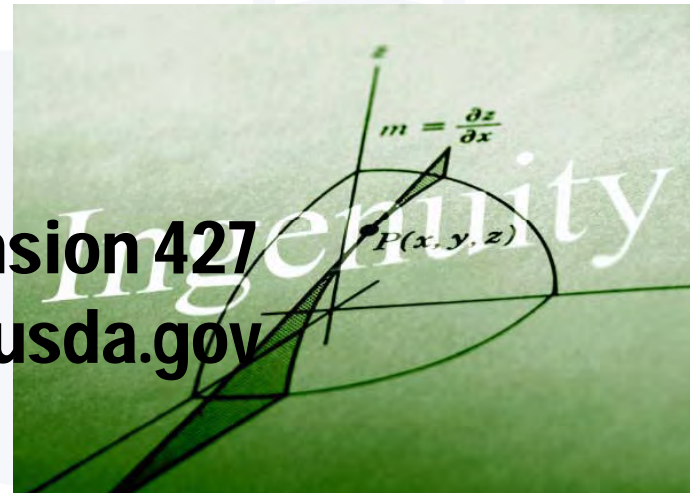


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[www.usda.gov/rus/](http://www.usda.gov/rus/)

# USDA Rural Development Business Programs

F. Dean Edwards  
Program Director  
317-290-3100 Extension 427  
[dean.edwards@in.usda.gov](mailto:dean.edwards@in.usda.gov)



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# USDA Rural Development Business Programs

Additionally, the program provides viable business opportunities for agricultural producers. This assistance is available through the USDA Rural Development uses of agricultural products, including energy development, as well as research and support for agricultural cooperatives. The program works through partnerships with public and private community-based organizations and financial organizations to provide financial assistance, business planning, and technical assistance to rural businesses.



# **USDA Rural Development Business Programs**

**Business & Industry (B&I) Guaranteed Loans**

**Rural Business Enterprise Grants (RBEG)**

**Rural Business Opportunity Grants (RBOG)**

**Rural Economic Development Loans/Grants (REDLG)**

**Rural Intermediary Relending Program (IRP)**



# USDA Rural Development Business Programs

## Business & Industry (B&I) Guaranteed Loans

- Lender Makes Loan
- Comes To Rural Development For Guarantee
- Most Banks Are Eligible - State or Federal Chartered
- Most Types Of Businesses Are Eligible



# USDA Rural Development Business Programs

## Rural Business Enterprise Grants (RBEG)

- Designed for non-profit organizations and public bodies
- Grant funds used to set up Revolving Loan Funds (RLFs)
- To purchase machinery and equipment
- For technical assistance (i.e. feasibility studies and/or market research)



# USDA Rural Development Business Programs

## Rural Business Opportunity Grants (RBOG)

- Designed for non-profits, public bodies or co-ops
- To pay costs of providing rural economic planning
- Technical assistance for rural businesses
- Training for rural entrepreneurs or economic development officials





# USDA Rural Development Business Programs

## Rural Economic Development Loans/Grants (REDLG)

- **Grants to Current RUS Electric Borrower**
- **Creates Revolving Loan Funds**
- **Applicants compete Nationwide**



# USDA Rural Development Business Programs

## Rural Intermediary Relending Program (IRP)

- Designed for non-profit organizations and public bodies
- Maximum loan amount: \$750,000
- Terms: 1%, 30 years
- Reloan to ultimate recipients (UR)
- Intermediary establishes rates/terms to UR



# Resources

- Rural Development
  - Lafayette 765-474-9992 ext 4
    - Business and Industry - John Anthrop extension 116
    - Community Programs - John Magee extension 117
  - LaPorte 219-324-6303 extension 4
    - Community Programs - Steve Ballard extension 113
  - Plymouth 574-936-2024
    - Business and Industry - Melissa Christiansen Extension 111
- USDA Rural Development <http://www.rurdev.usda.gov/>
- USDA Faith-Based and Community Initiatives <http://www.rurdev.usda.gov/rd/fbci/>
- White House Office of Faith-Based and Community Initiatives <http://www.whitehouse.gov/government/fbci/>





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*Where Rural Matters*

Working with local, state, and national partners to provide resources and technical assistance to aid rural communities in shaping their visions for economic development.



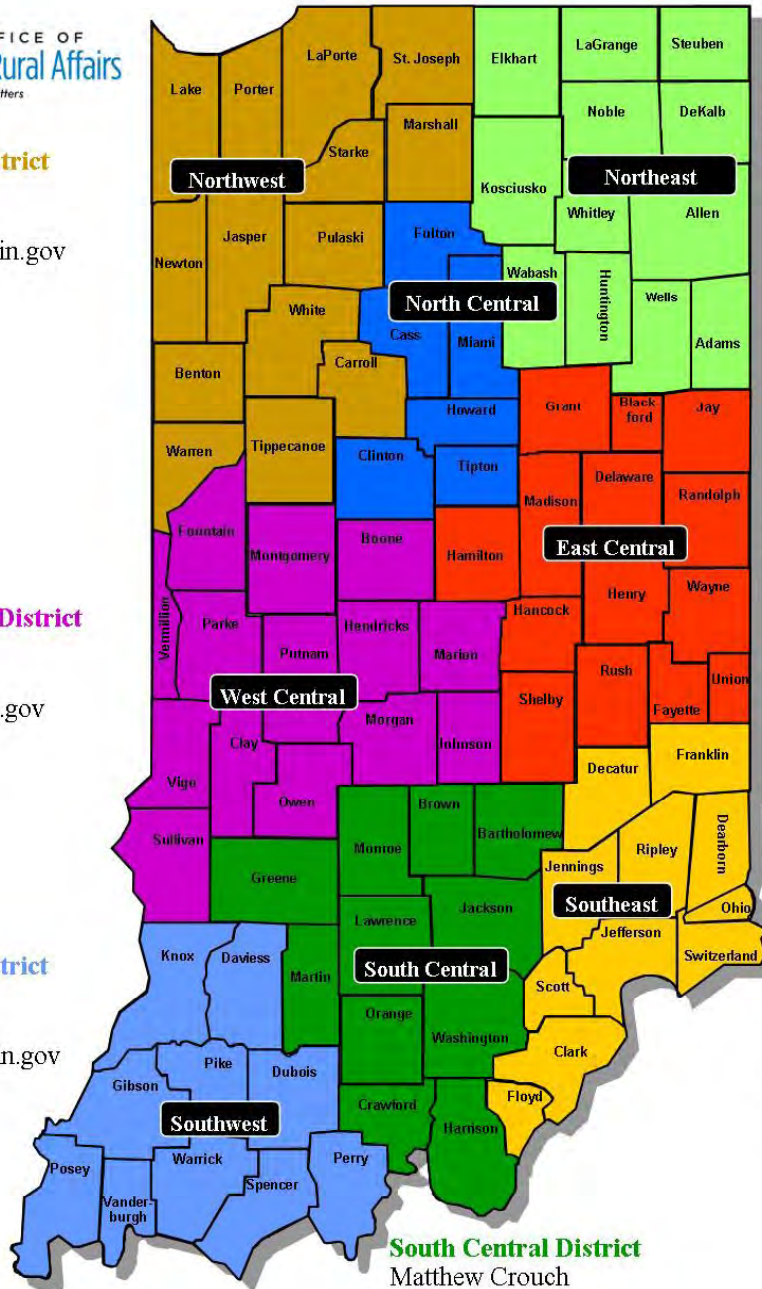
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**Community & Rural Affairs**  
*Where Rural Matters*

**Northwest District**  
Gerry White  
317.694.8372  
gewwhite@ocra.in.gov

**West Central District**  
Jill Curry  
317.450.5078  
jcurry@ocra.in.gov

**Southwest District**  
Ellen Harper  
317.439.8905  
eharper@ocra.in.gov

**North Central District**  
Steven Ray  
317.460.4234  
sray@ocra.in.gov



**Northeast District**  
Ryan Daniel  
317.650.1609  
rdaniel@ocra.in.gov

**East Central District**  
Michael Thissen  
317.509.0657  
mthissen@ocra.in.gov

**Southeast District**  
Erica Speer  
317.690.9736  
espeer@ocra.in.gov

**South Central District**  
Matthew Crouch  
317.750.7670  
mcrouch@ocra.in.gov



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# Community Development Block Grant Program (CDBG)

- Indiana administers federal funding from the U.S. Department of Housing and Urban Development (HUD). OCRA uses these funds to provide grants to small cities, towns, and counties with populations of less than 50,000 residents for community improvement projects.
- These federal funds are used to implement a variety of activities for housing and community development projects.



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# Community Focus Funds (CFF)

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- Commonly used for:
  - Infrastructure
  - Clearance
  - Senior centers
  - Special needs facilities
  - Fire trucks
  - Community centers
  - Libraries
  - Downtown Revitalizations
  - Planning



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# Community Focus Funds (CFF)

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- Two or three competitive funding rounds per year.
- Maximum grant amount cannot exceed \$600,000.
- Required local match of at least 10% of the total project cost, cash or debt.
- Projects must benefit low to moderate income persons or eliminate slum/blight.



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# Community Focus Funds (CFF)

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- Not-for-profit organizations are eligible as sub-recipients if necessary.
- Funds awarded will have a significant impact on the total project.
- Must be ready to proceed and be completed in 18 months.
- Must use a certified Grant Administrator.

# Site Clearance

- Brownfield sites can use this type of project to clear a building which presents safety and health issues.



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# Contact OCRA

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Indiana Office of Community and Rural Affairs  
One North Capitol, Suite 600  
Indianapolis, Indiana 46204  
800.824.2476  
[www.ocra.IN.gov](http://www.ocra.IN.gov)



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P.L. 107.118. Small Business Liability Relief and Brownfields Revitalization Act of January 11, 2002 U. S EPA, Region 5

*Deborah Orr  
August 2010*



# Brownfields Definition

“.....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.”



## Subtitle A. Brownfields Revitalization Funding provides \$200 million a year

- Authorizes grants of up to \$350K per site for *assessment*.
- Authorizes grants of up to \$200K per site for eligible entities, including not-for-profits, to *clean up* brownfields\*.
- Authorizes grants of up to \$200K for *job training* to eligible entities.
- Authorizes grants for up to \$1M for *revolving loan fund* (RLF) program\*.
- Authorizes targeted brownfields assessments.

\*20% cost share

## Subtitle B. Brownfields Liability Clarifications

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- **Contiguous Property Owner.** Superfund liability relief for innocent persons who own property that is contaminated solely due to a release from a neighboring property, so long as the person did not cause or contribute to the release.
- **Innocent Landowners.** Provides Superfund Liability relief for landowners who had no reason to know of contamination at the time of purchase.
- **Prospective Purchasers and Windfall Liens.** Provides Superfund liability relief for future buyers of facilities who are not responsible for contamination.

# All Appropriate Inquiries

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- BF law requires EPA to establish the AAI rule.
- AAI effective date is November 1, 2006
- Property buyers who want CERCLA liability protection and eligible entities that use EPA BF funds are affected by AAI.
- More information on AAI can be found at:

[www.epa.gov.brownfields](http://www.epa.gov.brownfields)



# Subtitle C. State and Tribal Response Programs

- Bars Federal enforcement action for sites in State/Tribal cleanup programs in some circumstances.
- Federal re-openers to ensure safety net (State/Tribal requests, endangerment, new information).
- States/Tribes maintains list of sites in response program.
- Provides suggested elements of State/Tribal response programs.
- Can provide NPL deferral of site in State/Tribal Programs.
- States/Tribes are provided up to \$50 million a year to support brownfields programs.

FY 2009 Appropriations budget: Competitive funding is \$241.5 million. EPA anticipates award of approximately 289 cooperative agreements nationally.

## Successful proposals in Region 5 totaled 87

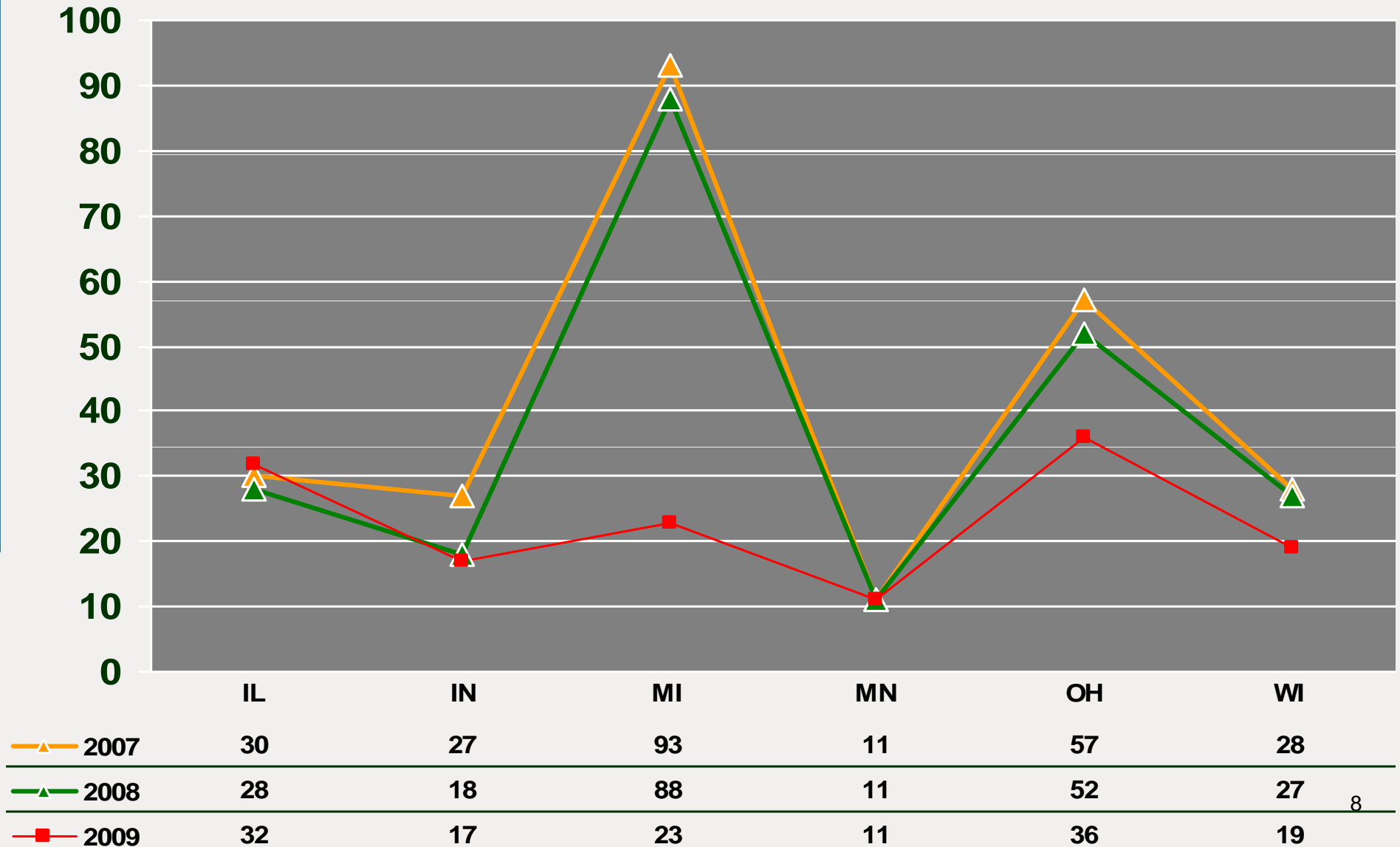
### State

- IL - 12
- IN - 7
- MI - 29
- MN - 7
- OH - 21
- WI - 11
- Tribal - 12
- State/Tribal - 18

### Grant Type

- Assessment - 50
- Cleanup - 15
- RLF - 15
- Job training - 7

# Number Of R5 BF Proposal By State 2007 - 2009



# Who can apply\*?

- General Purpose Unit of Local Government.
- Land Clearance Authority or other quasi-governmental entity.
- Government Entity Created by State Legislature.
- Regional Council or group of General Purpose Units of Local.
- Redevelopment Agency established by the state.
- States and Tribes.

**\*coalitions**

# Indiana Finance Authority

## activities

- 128(a) funding
- Trails and Parks Initiative
- Auto Sector Brownfield Assessments Initiative
- Revolving Loan Fund
- ARRA funding for LUST
- Seeking coalition Partners
- Contact: Michele Oertel, 317.234.0235



# Assessment Success Story: West Allis, WI Wehr Steel – 2009

**Before**

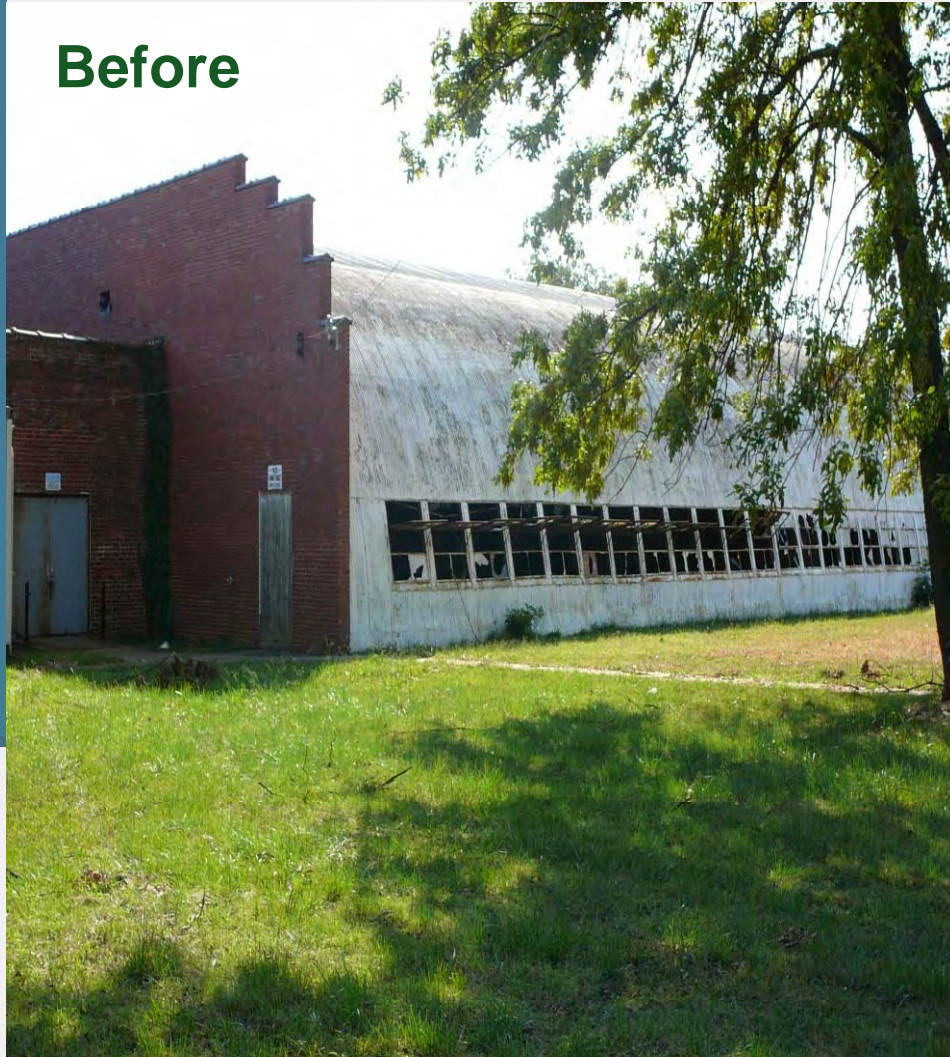


**After**



# Cleanup Success Story: Metropolis, IL Former Laidlaw Facility - 2009

**Before**



**After**

# RLF Success Story: Columbus, Ohio Whittier Property - 2009

**Before**



**After**



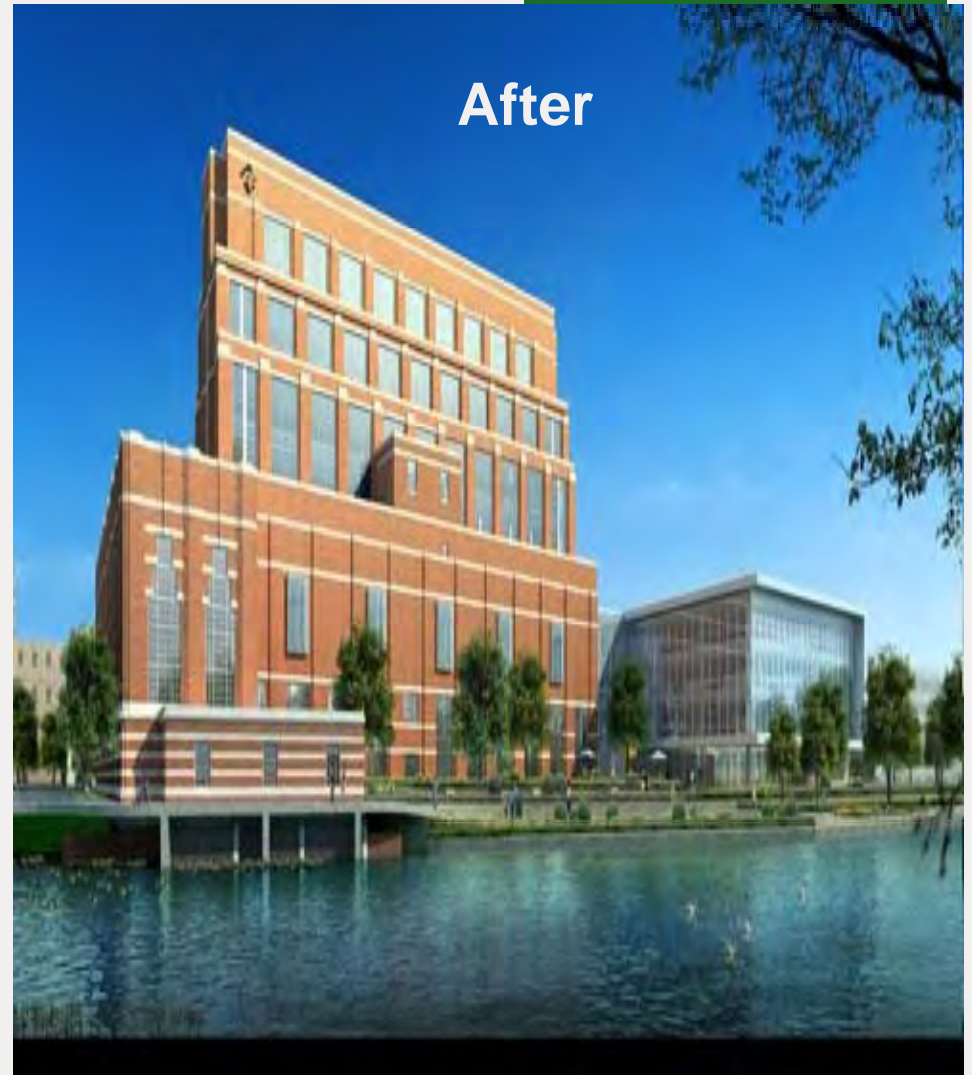


# RLF Success Story: Lansing, MI Former Ottawa Street - 2009

Before



After



# TBA Success Story: Ligonier, IN Essex Wire - 2009



# Job Training Success Story



# ATSDR's Public Health work and Brownfields Projects

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- Land Reuse Screening Tool
- Baseline Agency Capacity to Work on Land Reuse/Brownfields
- Community Guidance/Training Programs
  - Nuts and Bolts of PPH and Brownfields
  - Best Practice Sites

# Federal Historic Preservation Tax Credit Program



- Encourages protection of landmark
- Increases the value of the property, returns underutilized structures to the tax rolls
- Upgrades neighborhoods
- Sustainable Practice

# Brownfields Tax Incentive

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- Allows environmental cleanup costs to be deducted in the year incurred
- Incentive allows for deduction for petroleum contamination
- Previously filed tax returns can be amended
- Expired December 31, 2009
- Check IRS guidance or consult qualified tax professional
- Contact: Michele Oertel, 317.234.0235

# Environmental Justice and Brownfields

Message from Mathy Stanislaus, OSWER Director, to EPA staff on September 2009:

“Look for opportunities to use cleaned up land for urban gardens and urban agriculture. Disadvantaged communities may be particularly interested in opportunities to become more economically independent.”



# Application Schedule for FY2011 (draft)

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- Request for Proposal -- August
- Job Training Grant proposals due mid October
- Assessment, Revolving Loan, Cleanup Fund (ARC) proposals -- mid October
- Spring 2012 – Award Announcements
- Fund available before October 1



# Training Opportunities

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- FY2011 Brownfields Competitive Proposal Guideline Training: September 7 - 9, 2010.
- FY2011 Brownfields Grants Administration Training, TBD
- 2011 National Brownfields Conference, April 3 -5, 2010, Philadelphia PA.

# USEPA Region 5 Brownfields Contact

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Deborah Orr

Phone: 312.886.7576

E-mail: [orr.deborah@epa.gov](mailto:orr.deborah@epa.gov)

Webpage: [www.epa.gov/R5Brownfields](http://www.epa.gov/R5Brownfields)

**The FY2011 grant application guidelines  
will be available at**

**[www.epa.gov/brownfields](http://www.epa.gov/brownfields)**

**hopefully by early August.**

# Indiana Brownfields Program

## Incentives: Financial and Legal Assistance

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*Michele Oertel*  
*317-234-0235*

Redevelopment Resources for Blighted Properties  
Monon Workshop  
August 18, 2010



## Presentation Overview

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- What's the bad news? – obstacles (or opportunities?)
- What's the good news? – incentives (for opportunities)
- Who needs financial and legal/liability assistance?
- How can the Indiana Brownfields Program help?
- What do you really need to remember?
- What are your next steps?



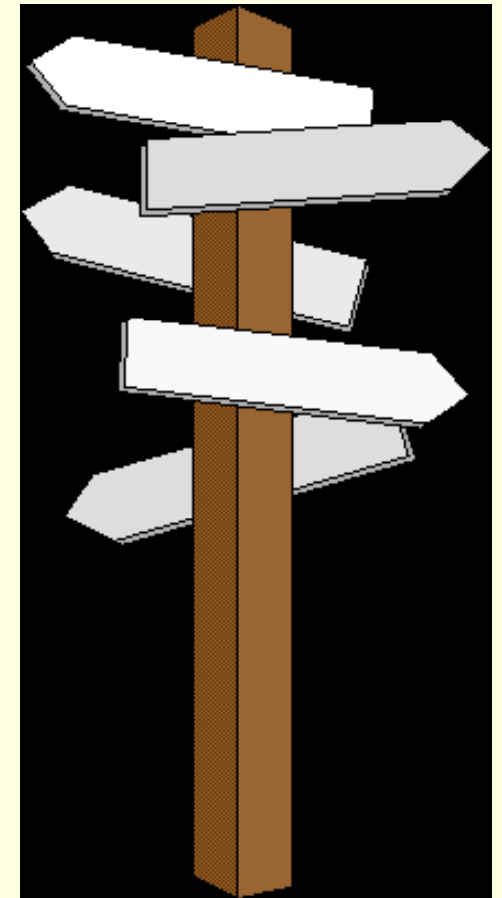
# Obstacle or Opportunity?





# Issues with Brownfields

- **Science**
  - Environmental contamination factor*
  - Private environmental consultant & IDEM opinions on technical aspects
- **Law**
  - Liability fears
- **Real Estate**
  - Property reuse & transfers
  - Brownfields vs. Greenfields
- **Politics**
  - Competing priorities of local governments
- **Socio-economics**
  - Tax base in blighted areas
  - Jobs
- **Art**
  - Understanding & coordination of multi-disciplines
  - Creativity





# What are Obstacles to Brownfield Redevelopment?

- **Real or potential environmental contamination**
- **Assessment / Cleanup costs**
- **Liability issues for the lender, prospective purchaser, and third parties**
- **Socio-economic issues**
- **Economic development climate**
- **Viability of re-use plans for the site**



# More Potential Obstacles to Redevelopment?

- Unknowns – risks, ownership, access
- Lack of awareness
- Lack of planning
- Lack of partnerships (*among local gov't, developers, community groups, etc.*)
- Lack of community support





## Who Can Help?

- WE...can help you help yourselves!
- YOU...can help redevelop brownfields!
  - Identify potential partners to help you.
  - Identify blighted priority properties.
  - Provide input for proposed brownfield redevelopment projects.
  - Promote brownfield sites when planning new parks; recreation, youth, and senior citizen centers; businesses; municipal buildings; and schools.
  - Support businesses that have redeveloped brownfields or plan to occupy brownfields.



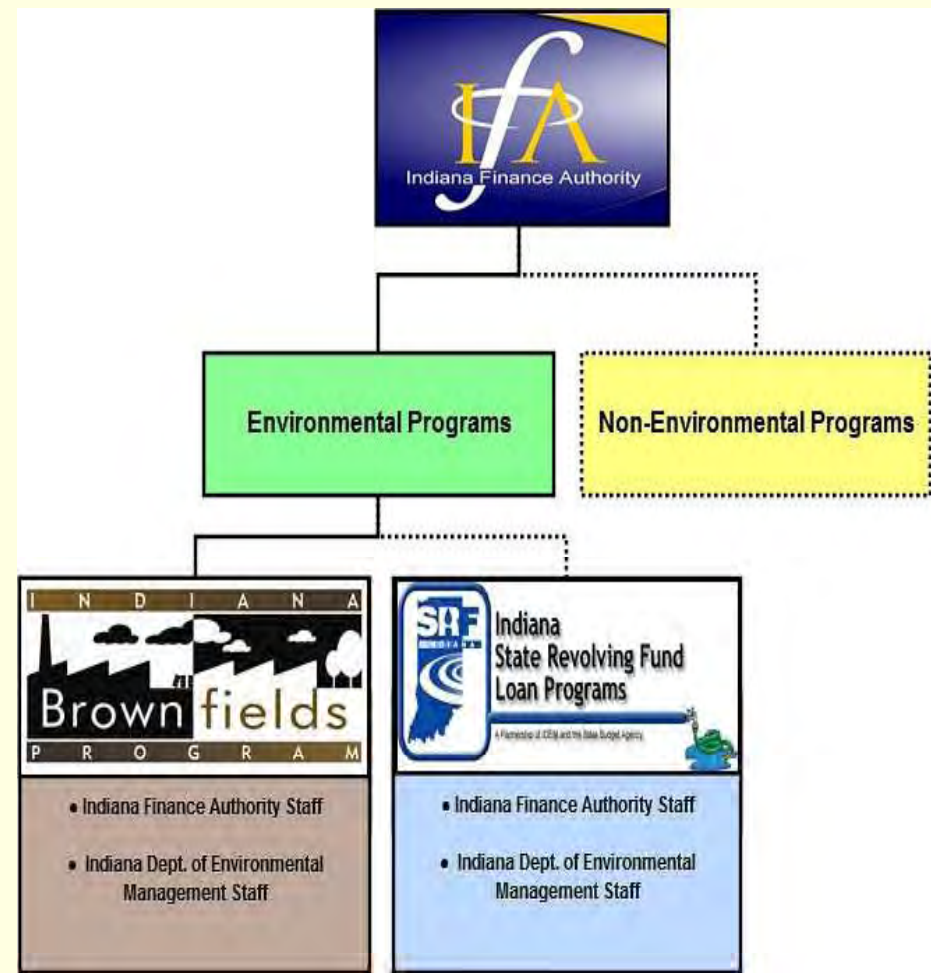
## Stakeholders/Partners

- Local Government – Public
- State and Federal Government Agencies – Public
- Local/State Interest Groups - Private & Public
- Local Business Organizations - Private & Public



# Indiana Brownfields Program Lends a Hand

- Helps communities by providing:
  - Educational Assistance
  - Financial Assistance
  - Legal Assistance
  - Technical Assistance
- Serves as a liaison with U.S. EPA for financial assistance
- Coordinates with IDEM's Voluntary Remediation Program
  - Certificates of Completion
  - Covenants Not to Sue
- Coordinates with other related IDEM programs





## When You Want/Need \$...

- Indiana Brownfields Program - loan funding throughout the year
  - Stipulated Assessment & Remediation Grants - *suspended*
  - Federal Matching Grants - *suspended*
  - Low-interest Loans - *suspended*
  - Revolving Loan Fund (RLF) Incentive (federally funded)
  - Trails and Parks Initiative (federally funded) – *ending*
  - Automotive Sector Brownfields Assessment Initiative
  - Supplemental Environmental Projects
  - State Revolving Loan Fund coordination
  - Future funding via U.S. EPA



## When You Want/Need Liability Assistance...

- Indiana Brownfields Program – letters throughout the year
  - Environmental liability interpretation letters, including BFPP language
    - Comfort Letters
    - Site Status Letters
  - Environmental technical oversight



# Liability Interpretation Letters

## ■ **Comfort Letter:**

- Issued to a party that qualifies for an applicable exemption to liability found in Indiana law or IDEM policy, but is not a legal release from liability
- Explains the applicable liability exemption or IDEM's exercise of enforcement discretion under an applicable IDEM policy



# Liability Interpretation Letters

## ■ Site Status Letter:

- Issued to a party that can demonstrate that current levels of contaminants of concern substantially meet current cleanup criteria as established by IDEM under the Risk Integrated System of Closure (RISC)
- Does not address the potential liability of the party requesting the letter
- States that based on a technical analysis of information submitted to IDEM pertaining to site conditions, IDEM concludes that current site conditions do not present a threat to human health or the environment and that IDEM does not plan to take or require a response action at the brownfield site



## Teamwork leads to Success!

Wabash: Former Bront building demolished to make way for new YMCA facility with Skate Park across the street







## Teamwork leads to Success!

South Bend: Former Studebaker Plant 8 deconstructed to make way for Green Tech Transfer and Recycling Station





## Teamwork leads to Success!

Indianapolis: Former Gas Stations redeveloped into vibrant Live-Work Residences





## Important Points to Remember

- Brownfields: not just obstacles or challenges – but opportunities!
- Brownfield redevelopment balances economic development with environmental protection.
- Brownfield projects are driven by local leaders.
- Success breeds success – talk to other stakeholders – don't reinvent the wheel.
- 3 Ps: planning (*long-term*), *public participation*, and *partnerships are keys to success!*
- Brownfield projects may warrant state and/or federal assistance.
- **Indiana Brownfields Program offers tools to address environmental issues to facilitate brownfield redevelopment.**
- ***Next steps: Determine needs and ask for appropriate assistance....***



# Contact Information

- **Jim McGoff, Director of Env. Programs, IFA** 317- 234-2916  
[jmcgoff@ifa.in.gov](mailto:jmcgoff@ifa.in.gov)
- **Meredith Gramelspacher, Asst. Dir. & General Counsel** 317- 233-1430  
[mgramels@ifa.in.gov](mailto:mgramels@ifa.in.gov)
- **Sue Overstreet, Administrative Assistant, General Questions** 317- 234-4293  
[soverstreet@ifa.in.gov](mailto:soverstreet@ifa.in.gov)
- **Michele Oertel, Federal Funding & Community Relations** 317- 234-0235  
[moertel@ifa.in.gov](mailto:moertel@ifa.in.gov)
- **Sara Westrick Corbin, Financial Incentives** 317- 234-1688  
[swestrick@ifa.in.gov](mailto:swestrick@ifa.in.gov)
- **Kevin Davis, Technical Matters** 317- 233-2415  
[kdavis@ifa.in.gov](mailto:kdavis@ifa.in.gov)

- Check out the Indiana Brownfields Program web site at [www.brownfields.in.gov](http://www.brownfields.in.gov)



*Environmental Stewardship. Economic Development.*



# Navigating the Challenges of Coalition Grants

Redevelopment Resources for Blighted Properties Workshop

**Technical Assistance to  
Brownfields Communities (TAB)**

Kankakee-Iroquois  
Regional Planning Commission  
August 18, 2010  
Monon, IN

# In keeping 'green' and paperless ...

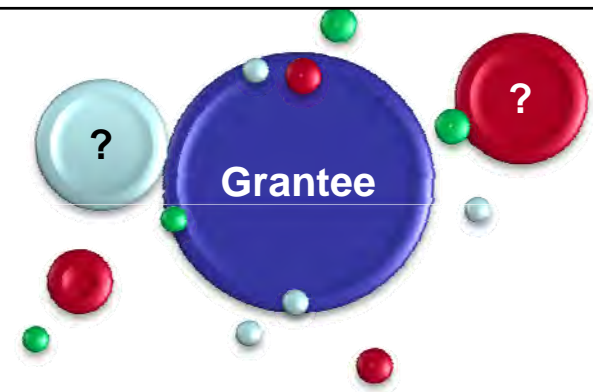
There is no handout. Please take away more in concepts and ideas than notes.

An electronic copy of this presentation will be e-mailed to you upon request.

Please e-mail:

Dave Koch / Terracon  
[dekoch@terracon.com](mailto:dekoch@terracon.com)

# Coalition



- *n. a combination; union; an alliance between entities, during which they cooperate in joint action, each in their own self interest.*
- EPA Brownfields; A coalition is a group of three or more eligible entities that submits one grant proposal under the name of one of the coalition participants who will be the grant recipient. Coalition members may not have the same jurisdiction (i.e., different departments within the same county government) unless they are separate legal entities (i.e., a city and a redevelopment agency).

Some observations on challenges  
and solutions from the trenches ...

# Why Coalition approach?

- Same reason a need for Regional Commission, the 'multiplier' effect of numbers
- Individually, any one community may not;
  - Have staff or resources to seek and manage the federal funds
  - Have enough Brownfield sites to warrant a grant application
  - Be able to demonstrate sufficient need to be competitive
  - Be able to plug into other resources that will strengthen application and increase results



# Brownfields are Opportunity

**“Opportunity is missed by most people because it is dressed in overalls and looks like work.”**

**Thomas Alva Edison**

# 5 Challenges of Coalitions

- Picking The Right Partners
- Picking Target Areas
- Overcoming Geography
- Overcoming Inertia
- Dilution of Communication

# Picking Partners

- Don't form an assessment coalition simply on the basis of existing relationships
  - Don't try to 'make fit' partners of past projects or relationships without true Brownfield need
  - Some successful economic development partners of the past can detract from coalition and weaken the balance of demographics and joint demonstration of need necessary at application
- The strong primary grantee often has 3 traits;
  - Strong, well established management structure across the geographic boundary of the coalition
  - Ability and experience to manage federal funding through partnerships
  - Ability to serve as an unbiased third party directing force in managing assessment and equitable deliveries to partners



# Picking Partners

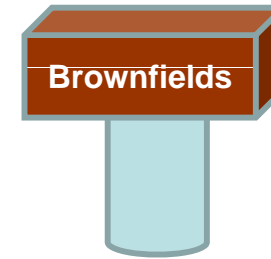
## Navigating the Pitfalls



- All partners are not equal
  - In need, resources, commitment and even sincerity
- Partners must believe they have Brownfield issues affecting their community
  - Surprising how many express interest because they only see ‘another pot of federal money’
  - Others are surprised once they ‘join up’ that Brownfields can mean blight and see it as a stigma on their community
- Each should have a Brownfields champion, better yet two
  - Often not the lead representative, doers over managers
  - Person who has time to respond quickly to coalition requests, attend working meetings and events
  - Person who has the support of ‘their boss’ to give these on a regular basis as a reasonably high priority

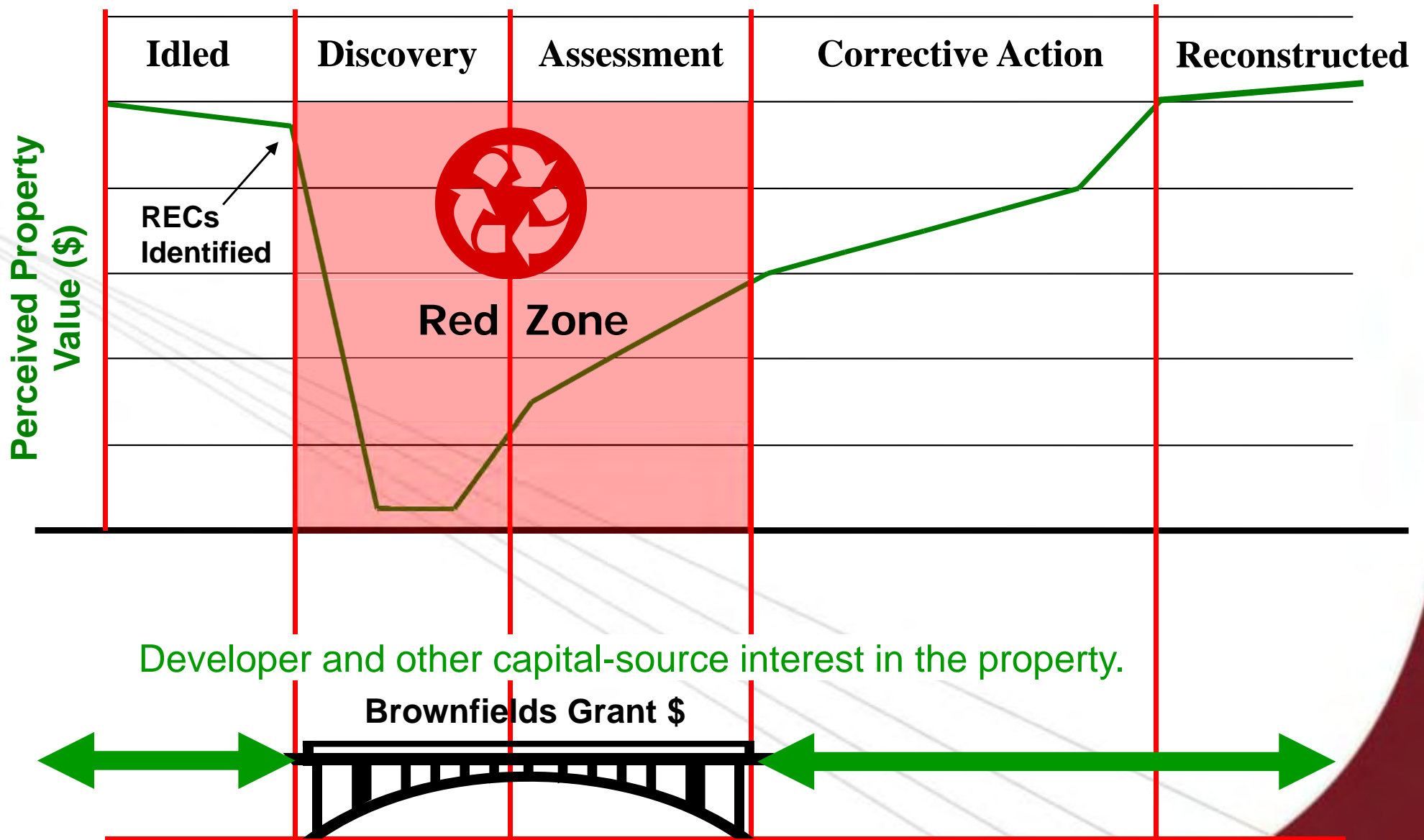
# Picking Partners

## Navigating the Pitfalls



- Brownfield funding is not a silver bullet that will solve all economic development issues
  - In some rare instances it has become Pandora's Box
- The successfully funded coalition will reach out and engage the region, communities and stakeholders in a process that educates and helps participants self-evaluate the appropriateness and need for Brownfields assessment and the benefits it may or may not bring
- So too, should a coalition during its formation
  - Engage potential partners in understanding what Brownfields are and are not
  - Educate them as to the limits of Brownfields funding, what it can and cannot do
  - Demonstrate by example what has been done by other coalitions, both the good and the negative aspects of participation

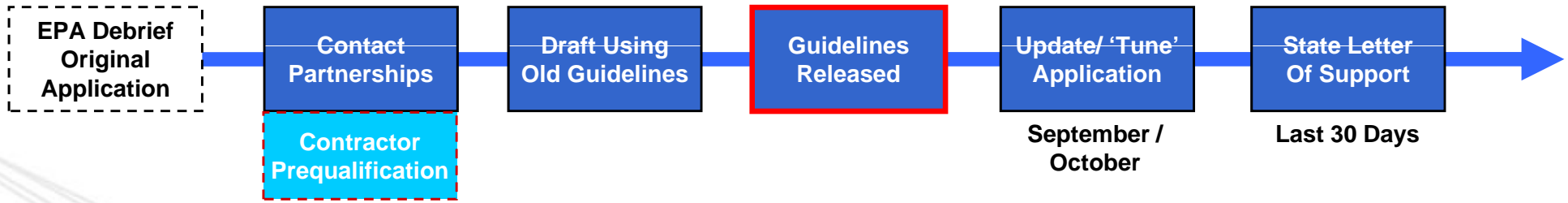
# Partners Must Understand Grant's Role



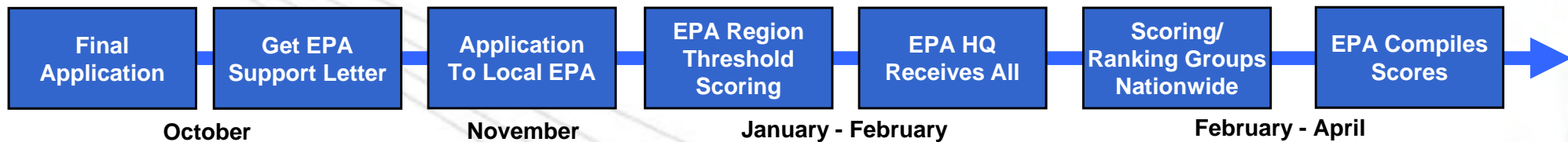
RECs: ASTM E1527-05 Recognized Environmental Conditions produce a stigma that affects property value whether impairment is real or not.

# Partners Must Understand Grant Process & Timing

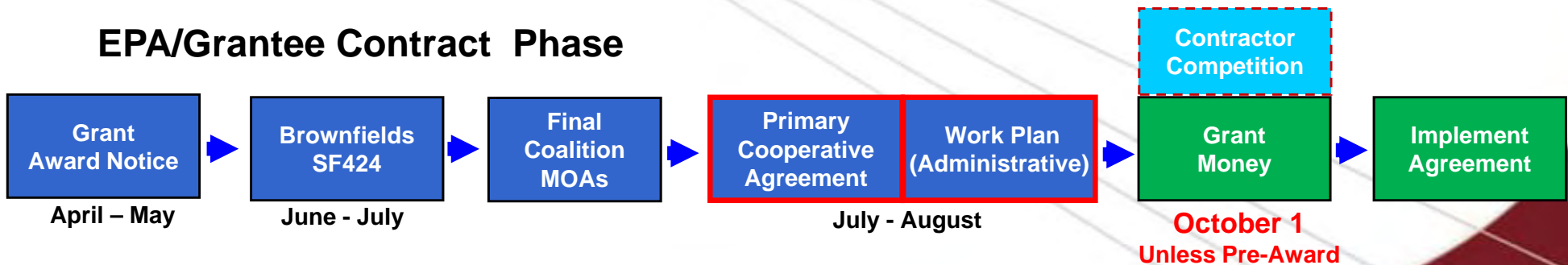
## Preparation Phase



## Competition Phase

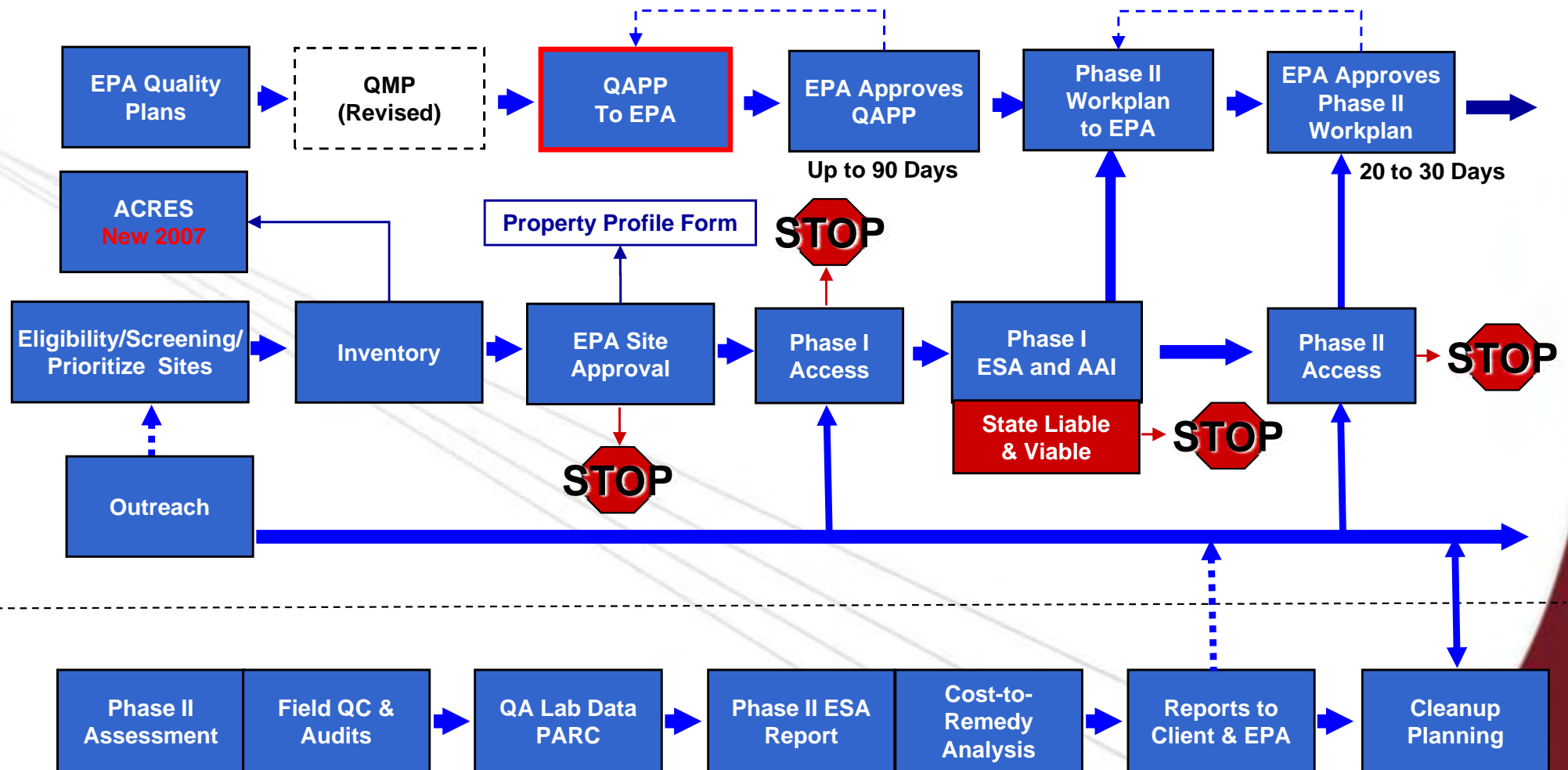


## EPA/Grantee Contract Phase



MOAs: Memorandum of Agreements between Coalition partners with primary grant recipient MWGRC

# Partners Must Understand Basics of Programmatic Processes & Timing



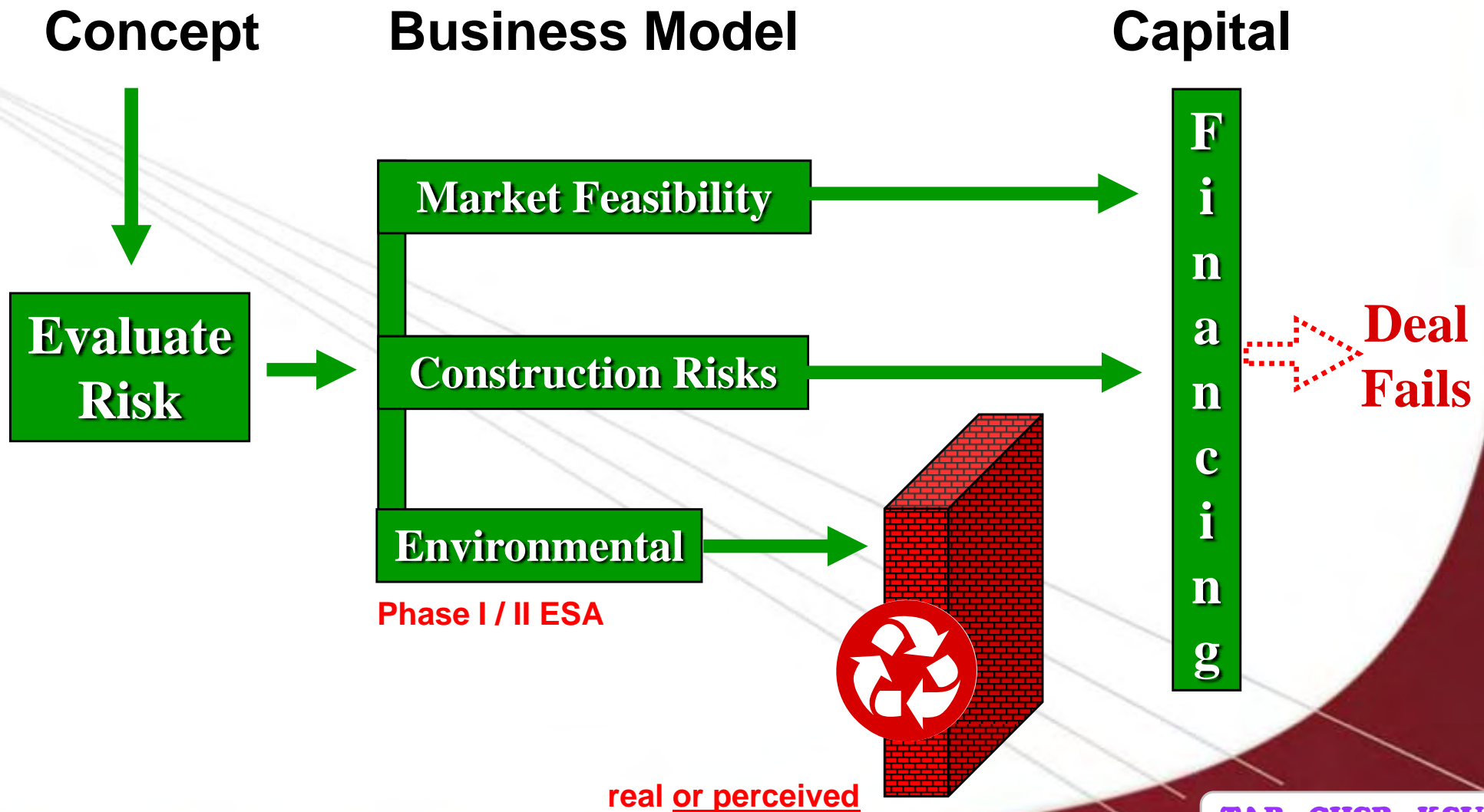


# Picking Target Areas



- Seems to be commonly one of the most difficult things for coalitions to get their heads around in the early stages of grant application
  - Partially due EPA guidance that assessments must be coalition-wide and need not provide property-specific details, but then ask for very detailed specifics of need and demographics
  - Common area of conflict in debrief comments
  
- Target Areas are your demonstrations of need for Brownfield funding
  - They will represent your project, although they physically can be much smaller segments than the overall coalition
  - They will provide 80-90% of your documentation statistics; demographics, financial impacts, etc.
  - They should have a common element that comes across as a Brownfields-related issue of health or financial distress
    - Automotive Alley
    - Smelter Waste Region
    - I-75 Relocation Corridor
    - Blue Creek Watershed
    - Southside Neighborhood

# Economic Development Projects That Have 'Hit The Wall'



# Practical Definitions

- Brownfields are real estate deals with an environmental “twist” that complicates, but does not prevent, redevelopment of the property. The property may not be contaminated.
- Brownfields are properties caught between “clean” and “nasty” Superfund.
  - “Clean enough” not to be public hazards
  - Perceived as too “dirty” for investors’ comfort
- In view of the current economy, Brownfields are also identified as Green & Sustainable

# Picking Target Areas

## Navigating the Pitfalls

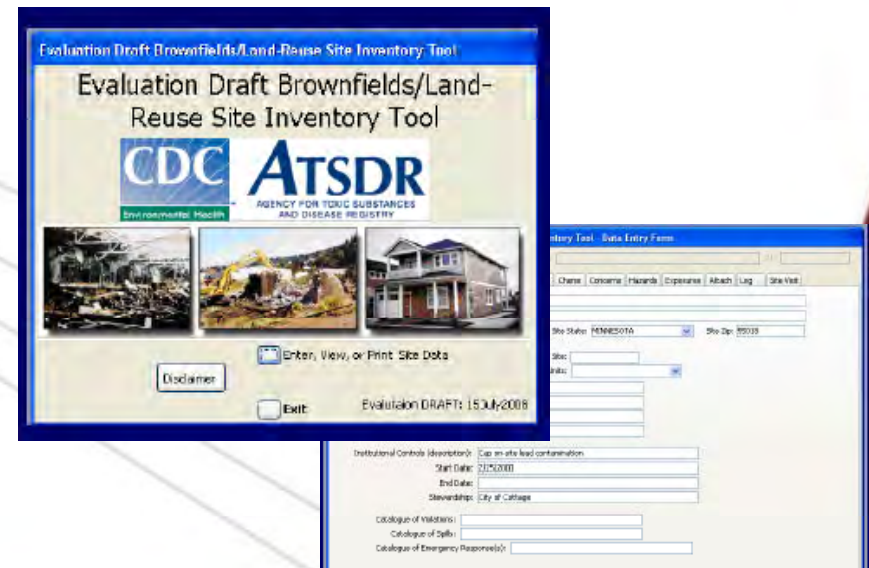


- Coalition target areas, to be meaningful, must conduct some preliminary research prior to application and establish the common element
  - Canvass the local public through coalition partners to gain insights
  - Engage public health and economic development departments
  - Engage state environmental regulator perceptions and databases
  
- Do a preliminary inventory to test that target areas do indeed have common issues and are Brownfields
  - A list of sites generated by a database search is not enough
    - Many, many listed sites are ineligible
    - Brownfields by definition are those that fall between “clean” and enforcement
    - Many listed sites are actually owners conducting their business properly (i.e., small quantity hazardous waste generators)
  - Apply the EPA eligibility rules , even though community- / coalition-wide
  - This is not the detailed inventory and prioritization that will occur with funding later

# Picking Target Areas

## Navigating the Pitfalls

- The inventory should be compiled by the partner(s) geographically enclosing the Target Area
- There are a number of good tools for developing a preliminary inventory, many of them capable of expanding into the working inventory of the coalition assessment grant
  - BIT (Brownfield's Inventory Tool) by TAB
  - ATSDR's Reuse Site Inventory Tool
  - As simple as custom spreadsheets



# Inventory Has Two Different Functions, Always Tailored to Coalition Needs

PRELIMINARY BROWNFIELDS SURVEY FOR NORTHWEST GEORGIA BROWNFIELDS ASSESSMENT COALITION GRANT APPLICATION

Tab No. To Be Assigned by Coalition

Preliminary Inventory #: To Be Assigned by Coalition

Address \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_

County \_\_\_\_\_

Zip Code \_\_\_\_\_

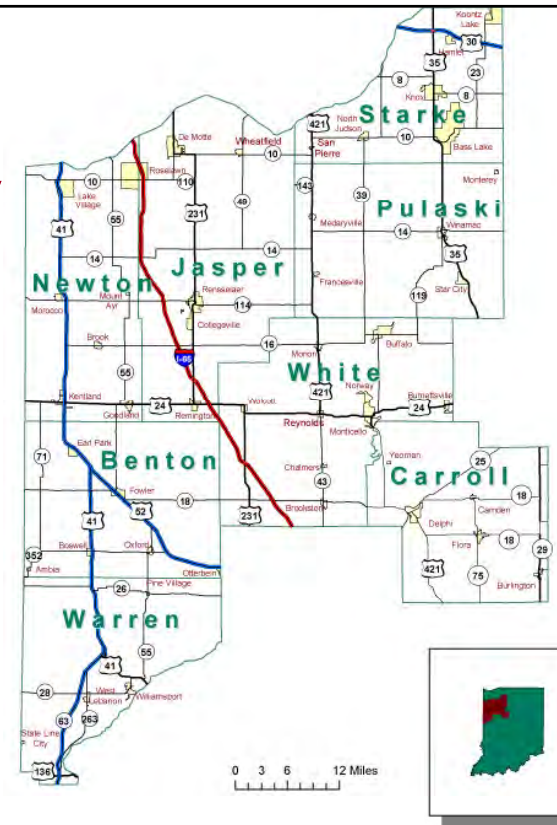
Owner Name \_\_\_\_\_

	Check Box			
	Yes	No	Not Known	Not Applicable
<b>Relationship to Redevelopment (Answer all that apply)</b>				
Is the property land use, past or present, related to Auto Alley or automobile industry?				
Is the property land use, past or present, related to Carpet & Textile industry?				
Is the property abutting the I-75 right-of-way?				
Is the property within one mile of I-75 right-of-way?				
Is the property within the proposed Coalition Boundary?				
Is the property located in a specially designated development or enterprise zone?				
Is the property within the boundary of an other active or former EPA Brownfields grant?				
Is the property within the boundary of a Tax Increment Finance (TIF) District or similar district?				
<b>Environmental Health (Answer all that apply)</b>				
Is there a suspected release of contaminants on the property?				
Is there a measured release of contaminants on-site in excess of state standards?				
Is there a measured release of contaminants on-site below state standards?				
Is there alleged on-site release of contaminants impeding property redevelopment?				
Is there alleged off-site release of contaminants impeding property redevelopment?				
Are there alleged health effects by citizens related to the property land use or associated contaminants??				
Is the property in an area designated as having blight?				
Is the property designated locally as a public nuisance?				
<b>Regulatory Programs (Answer all that apply)</b>				
Is the property involved in an active or previous federal assessment, cleanup or other regulatory action?				
Is the property involved in an active or previous State of Georgia assessment, cleanup or other regulatory action?				

- Now;**  
Demonstrate needs and target area for grant application
- After Award;**  
Determine eligibility, rank/score properties and prioritize to needs of coalition

# Overcoming Geography

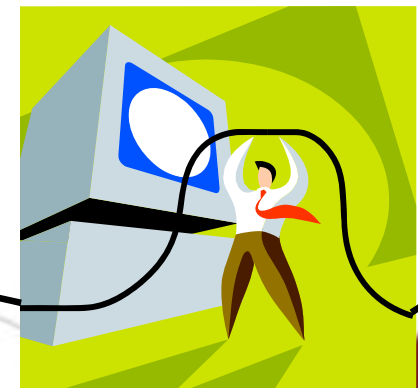
- Regional Planning Commissions have a better feel for the challenges confronting Brownfields assessment coalition applicants
- They face the same thing in their extended organizational, multi-partner organizations every day
  - Overlap and interaction of multiple administrative, political & financial spheres of influence
  - Balancing very location-specific opportunity for reinvestment for equity of benefit to partners vs equity of return to the region



# Overcoming Geography

## Navigating the Pitfalls

- With coalition partners and stakeholders spread out over hundreds or thousands of square miles, scheduled communication between partners becomes a necessity to be effective
- These working sessions can take a number of forms to fit your geography
  - Bi-weekly conference calls
  - Face-to-face meetings, often coinciding with community outreach events
  - WebEx, Windows Meeting or other similar online
    - Convenience of your own work personal computer
    - Adds visual presentations and materials sharing
    - Removes need and expense to travel





# Overcoming Geography

## Navigating the Pitfalls

- Too much talk, not enough action, can easily eat up a 3 year coalition assessment grant
- Partners should set the ground rules for performance and active participation
- The directing coalition committee, task force or other should not be overly large
  - Too many cooks in the kitchen doesn't spoil the soup, but it takes forever to do the dishes afterward
  - Champions should meet more frequently and report back to coalition partners for input

# Use Community-Based Organizations

## **Community Service and Action**

Community service and action CBOs focus on improving the general physical characteristics of a community. Although particular programs may be quite specific, these organizations tend to view their programs not merely as ends in themselves, but rather to see such programs within a broader community perspective. The CBOs categorized here differ from other problem-oriented CBOs in being more multipurpose. Descriptive Examples: Civic Service Groups, Community Development Groups, Neighborhood-Improvement Groups, Community Protection Groups, etc.

## **Health**

Health CBOs focus on preserving and enhancing the physical and/or mental health of a community including treatment of health problems, aftercare, and rehabilitation. Descriptive Examples: Health Education, Hospitals/Health Treatment Facilities, Crisis and Suicide Hotlines, Nursing Homes, Public Health Support Services, Rehabilitative Medical Services, Emergency Assistance, Hospices, Residential/Custodial Care, Community Health Care, Drug and Alcohol Abuse Treatment and Prevention Groups, etc.

## **Educational**

Educational CBOs have as their primary goal the education or increasing learning and knowledge of community residents. These groups are either directly involved or contribute to the educational process. Descriptive Examples: School-Based Educational Programs, School-Related Tutoring Programs, School-Based At-Risk Youth Programs, Community-Serving School-Based Groups, General Adult Education, Workplace-Related Programs, Adult Continuing Education, Literacy Educational Services, Preschool and Nursery Programs, etc.

## **Personal-Growth, Self-Development, Self-Improvement**

Personal-Growth CBOs aim primarily to build character, personality, and skills in individuals primarily through self-help and experiential learning as opposed to formal education. Descriptive Examples: Youth Development Programs, Adult Development Programs, Future Farmers, Adult/Child Matching Programs, Boys/Girls Clubs, CYO, Scouting Organizations, YMCA/YWCA, etc.

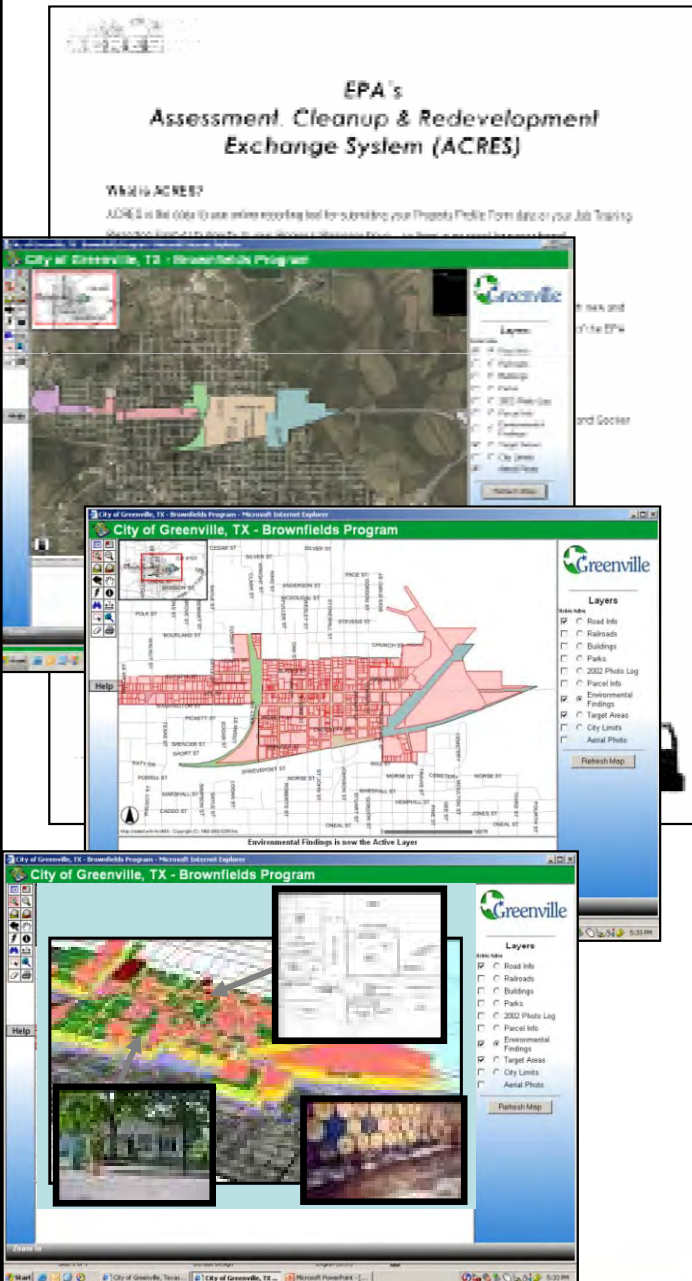
## **Social Welfare**

Social Welfare CBOs are oriented primarily toward providing for the general welfare of some category of community resident facing serious social problems due to their social situation. Their focus and the prime legitimization of their activity is not the community as a whole, but rather, service to particular categories of persons seen as having special needs, problems, or requirements. Descriptive Examples: Marriage and Family Problems Groups, Friendship/Relations Groups, Crime and Delinquency, Employment Assistance (e.g. Job Development/Training), Vocational Rehabilitation, Volunteer Recruitment, Screening Referral and Advocacy Groups, Consulting and Technical Assistance Groups, Homeless Shelters/Temporary Housing, Housing Support Services, Women's and Children's Shelters, Children/Youth Support Services, etc.

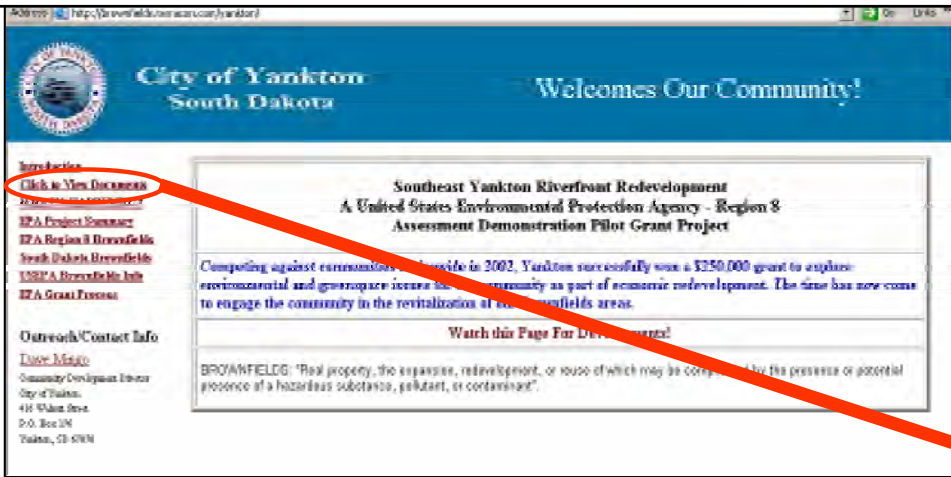
## **Self-Help Disadvantaged and Minority**

Self-help disadvantaged and minority CBOs have as their focus the betterment of the poor, women, or other such traditionally disadvantaged groups. These CBOs are generally oriented toward improving the quality of common welfare and quality of life of their target populations through changing society's perceptions and treatment of disadvantaged people. Descriptive Examples: Senior Citizens Programs, Programs for Persons with Physical and Cognitive Disabilities, MHMR Programs, etc.

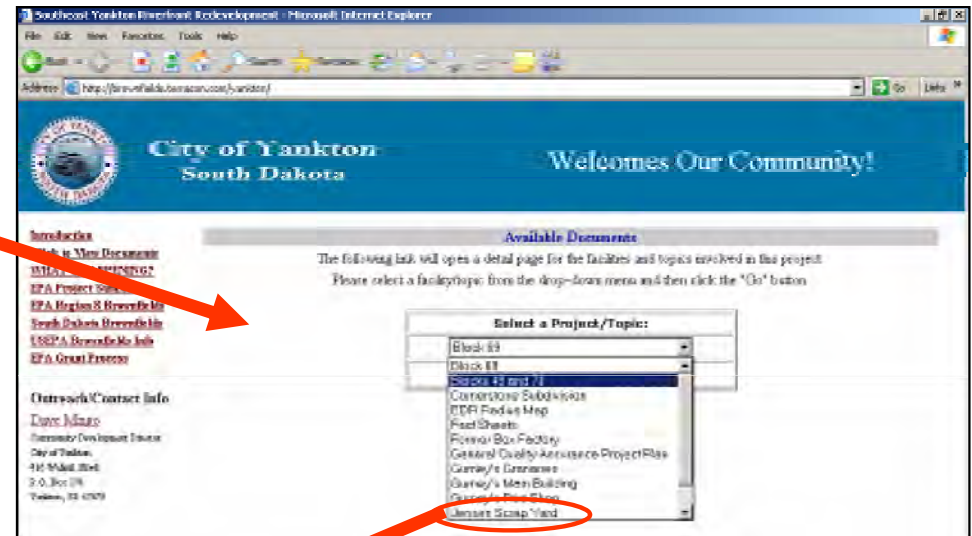
# Communication



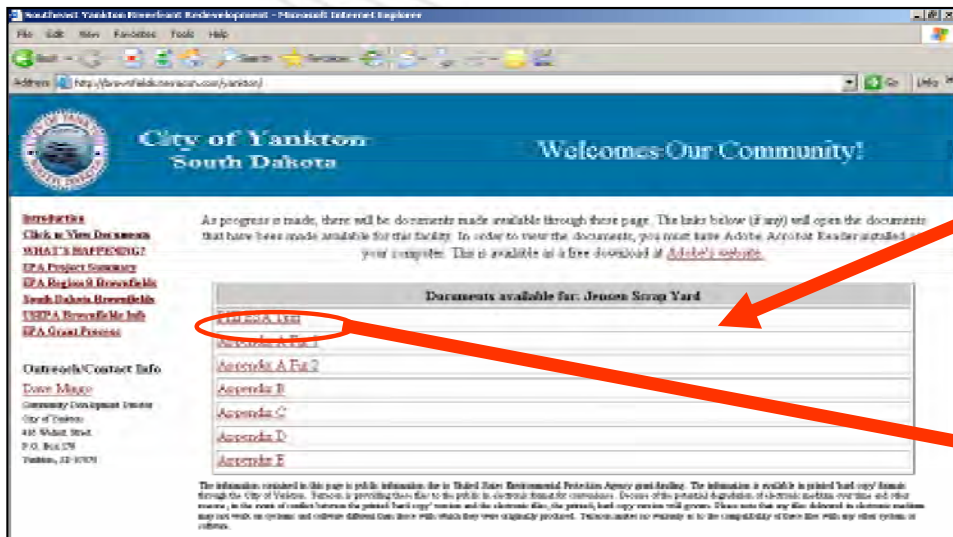
- Bi-weekly E-status as e-mail to primary stakeholders and regulators organized by task
  - Answers that surprise question by public, media, supervisors or politicians ... “What’s happening?”
- Quarterly reporting in Assessment, Cleanup & Redevelopment Exchange System (ACRES)
- Electronic Data Management
  - No “piles of files”
  - Use the “low end of high tech” for online, cost-effective data management and sharing
  - Updating support for GIS system



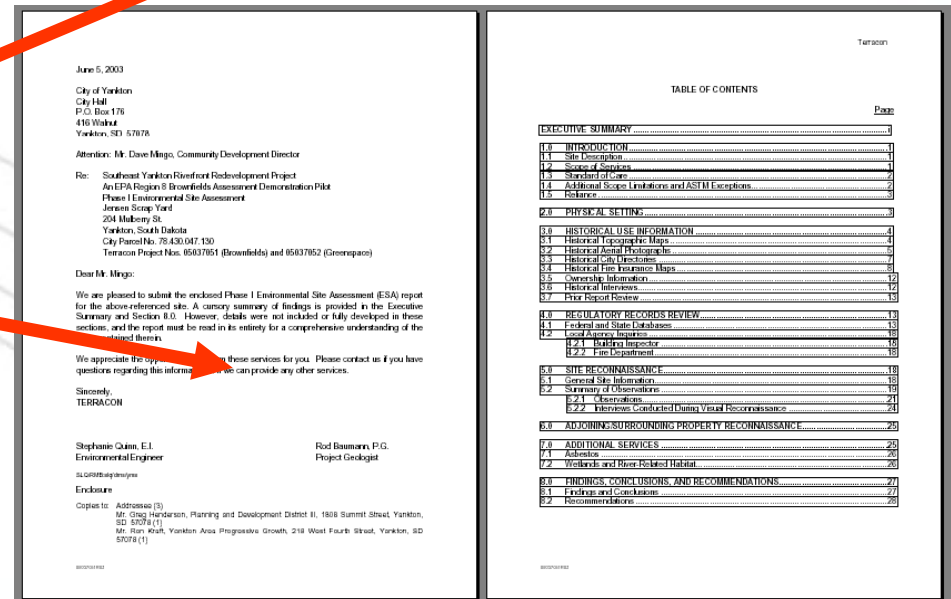
Internet- or intranet-based.



Point-and-click navigation.



Linkable to GIS, CADD and other documents with viewers made resident on system.



**Thank You**

stewart&irwin<sub>pc</sub>

**LEGAL TOOLS FOR ACCESS AND  
CONTROL OF BROWNFIELDS  
PROPERTIES**

**Presented by:**

**Robert M. Frye, Shareholder**

**Stewart & Irwin, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
(317) 639-5454**

**rfrye@silegal.com  
[www.silegal.com](http://www.silegal.com)**

# BROWNFIELDS

## Problem of Access and Control

 **Problem: How can local government gain access to or control over Brownfields sites to assess the hazards, secure the property and delineate the contamination?**

 **There is no direct legal authority in Indiana allowing local government to access private property to conduct environmental investigations**

# BROWNFIELDS

## Problem of Access and Control



### Constitutional Concerns -- Fourth Amendment

- administrative (non-criminal) inspections of property without a warrant are allowed only where there is a regulatory scheme with certain and regular inspections







# BROWNFIELDS

## Problem of Access and Control



### Potential Legal Tools

-  General authority for ordinance enforcement allows property entry to cause compliance and lien the property for costs – I.C. 36-1-6
-  Nuisance Actions – I.C. 36-30-6, -7, -8
-  Unsafe Building Law – I.C. 36-7-9
-  Property Tax Laws – I.C. 6-1.1-24

# UNSAFE BUILDING LAW

## Background



### The Unsafe Building Law (UBL)



#### Applicable to:

- a consolidated city -- by statute
- any other municipality or county that adopts an ordinance adopting the statute

# UNSAFE BUILDING LAW

## Background

### Ordinance must:

- adopt UBL provisions as a local ordinance
- establish uniform standards for securing, repairing and maintaining unsafe properties
- specify or establish the responsible executive department
  - ★ in a municipality with a building commissioner, the commissioner administers the UBL

# UNSAFE BUILDING LAW

## Background

Limitation: UBL focuses on structures; “Unsafe Building” defined as a *building or structure*, or any part thereof, that is:

- in an impaired condition making it unsafe to person or property
- a fire hazard
- a public nuisance
- dangerous to person or property due to a violation of statute/ ordinance concerning building condition or maintenance, or
- vacant and not maintained in a manner allowing for *human habitation, occupancy, or use* under a statute/ordinance

# UNSAFE BUILDING LAW

## Background

- Moreover, the legislative purpose of the UBL is stated in terms of the problems posed by *vacant structures* and remedies to ensure property maintenance and repair of *vacant structures*
- Therefore, the UBL is best-suited for and most often used in urban areas with multiple vacant, abandoned structures
- However, Brownfields often include problem structures, so the UBL could be used to address threats posed by buildings and structures on located on Brownfields properties






# UNSAFE BUILDING LAW

## Background

- However, the UBL arguably covers more than just buildings -- "Unsafe Premises" is defined to include:
  - ★ the unsafe building *and* the real property on which it is located
  - ★ a non-agricultural tract of real property without buildings if it is a fire hazard, a hazard to public health, a public nuisance, or dangerous to a person or property due to violation of statute or ordinance

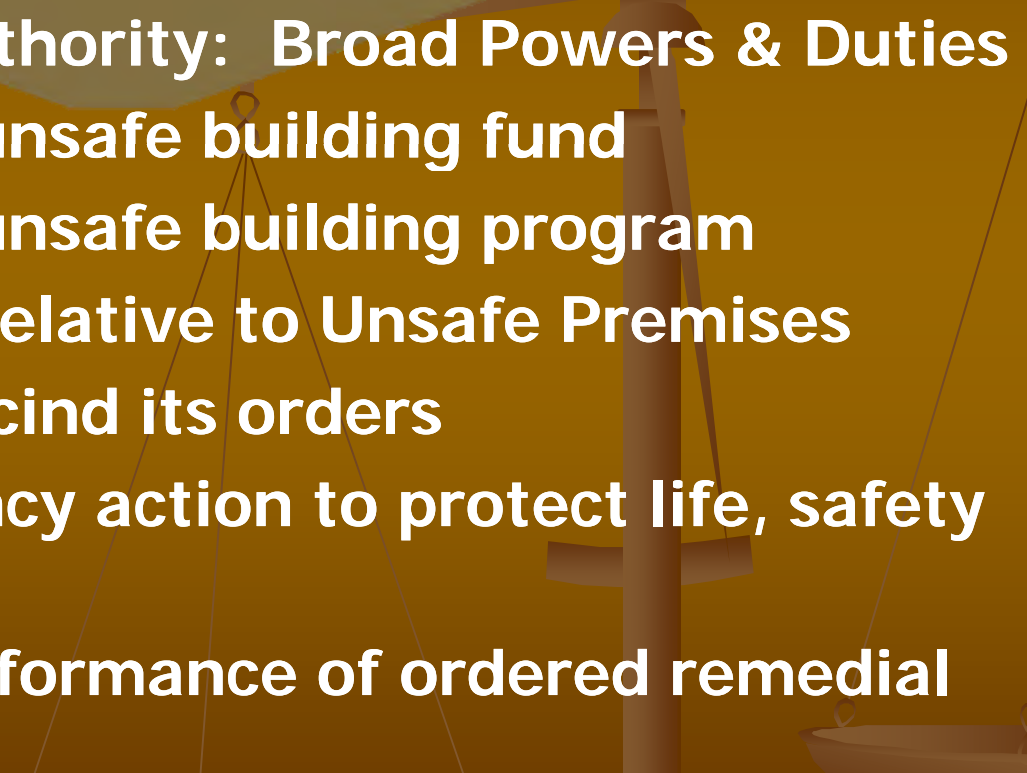
# UNSAFE BUILDING LAW Enforcement

 Ordinance must create an administrative enforcement structure, including:

-  a department = the executive department authorized to administer the UBL
-  an enforcement authority (EA) = the chief administrative officer of the department
-  a hearing authority (HA) = the person or persons designated as such by:
  -  the executive of a city or county
  -  the legislative body of a town

# UNSAFE BUILDING LAW

## Enforcement

- 
- Enforcement Authority: Broad Powers & Duties
    - establish an unsafe building fund
    - establish an unsafe building program
    - order action relative to Unsafe Premises
    - modify or rescind its orders
    - take emergency action to protect life, safety or property
    - cause the performance of ordered remedial action



# UNSAFE BUILDING LAW

## Enforcement



### Enforcement Authority's Powers & Duties (cont.)

- conduct building inspections to determine if unsafe
  - ★ authority limited to inspections of *buildings*; inspections of "premises" not mentioned
  - ★ provides a mechanism for obtaining a warrant
- prosecute its orders administratively or judicially
- collect costs of remedial work and penalties
- cause remedial costs and penalties to be certified by county as a real property special assessment

# UNSAFE BUILDING LAW

## Enforcement

### Enforcement Authority's Powers & Duties (cont.)

 initiate civil actions for:

- ★ injunctive relief requiring compliance with order
- ★ a performance bond for additional time for the owner to perform ordered work
- ★ civil penalties for willful failure to perform
- ★ appointment of a receiver over the property
- ★ authorization to perform ordered work
- ★ collection of work costs and penalties

# UNSAFE BUILDING LAW Enforcement

 Enforcement Authority's Orders: With regard to an Unsafe Premises, the EA may order:

vacation of an Unsafe Building (HA Review)




sealing an Unsafe Building

extermination of vermin in or about the Unsafe Premises

removal of trash, debris, fire hazardous material, or a public health hazard in or about the Unsafe Premises

# UNSAFE BUILDING LAW Enforcement

## Enforcement Authority's Orders (cont.)

-  repair or rehabilitation of building to bring it into compliance with legal standards required for human habitation, occupancy or use
-  removal of part or all of an Unsafe Building
-  require certain exterior improvements for buildings to be sealed for more than 90 days

# UNSAFE BUILDING LAW Enforcement

## ■ Hearing Authority's Powers and Duties:







conduct hearings to review the EA's orders

review hearing required for orders to vacate the premises, remove of all or part of a building, or to make exterior improvements required for long-term sealing of a building

review hearing required in other instances (i.e., orders for sealing a building, extermination of vermin, removal of hazards, and repair/rehab of a building) *only* if requested by owner within 10 days



# UNSAFE BUILDING LAW Enforcement

## Hearing Authority's Powers & Duties (cont.)

-  affirm, rescind or modify the EA's orders (or reduce or strike the order and penalties if satisfied that all necessary work has been performed)
-  impose a civil penalty up to \$5,000 for willful failure to comply with an order and for *each* instance where work is not progressing and the premises has a negative effect on property values or quality of life of surrounding area
-  require owner to post a performance bond
-  make a record of its findings

# UNSAFE BUILDING LAW Enforcement

## Hearing Authority's Powers & Duties (cont.)

-  New effective July 1, 2009: if HA affirms or modifies the EA's order, it shall issue a "continuous enforcement order" (CEO)
-  CEOs streamline the UBL enforcement process by authorizing specific ongoing compliance and enforcement activities, including assessment of fees and costs, without the need for a new notice of violation and hearing process

# UNSAFE BUILDING LAW

## Enforcement



**Court Actions: County Circuit and Superior Courts have jurisdiction to:**

- hear and decide appeals of the HA's actions
- hear and decide civil actions initiated by the EA
- affirm, modify or rescind remedial orders
- Issue continuous enforcement orders
- impose civil penalties, including treble damages for second or subsequent judgments rendered in any two year period, even if for different properties
- issue (or deny) inspection warrants



**Note: civil actions under the UBL have priority and must be tried and determined by the court as early as possible**



# UNSAFE BUILDING LAW Enforcement



## Abatement of Vacant and Abandoned Structures

- New code chapter effective July 1, 2009 – I.C. 36-7-36
- Applies specifically to commercial & industrial properties not used for six months and in need of completion, rehabilitation or repair
- Enforced by the EA created under the UBL and “in conjunction with any enforcement or civil action under” the UBL
- Authorized orders of abatement, cleaning and securing the vacant or abandoned structure and assessment of fines
- Vague language of the statute and its reference to the UBL render it unclear how effective this tool might be until tested in the courts

# UNSAFE BUILDING LAW

## Pros and Cons for Brownfields

### Con: Limits purposes for site access

- ▬ UBL allows access to real property only to:
  - ★ inspect *a building* to determine if it is unsafe, or
  - ★ cause ordered work to be performed
- ▬ emergency environmental hazards could be an exception (under either the UBL or general police power), but only to abate the immediate threat to persons or property
  - ★ more extensive remedial action for contamination probably preempted by state/federal law
- ▬ typical Brownfield not an imminent threat

# UNSAFE BUILDING LAW

## Pros and Cons for Brownfields

 **Con: Limitations regarding access (cont.)**


 **Example of Distinction:**

- ★ **Property A contains leaking chemical containers; the EA may use the UBL's emergency provisions to enter the property and remove the threat**
- ★ **Property B is environmentally impaired, but does not pose imminent danger; the UBL is not a good tool to gain entry for environmental investigation**

# UNSAFE BUILDING LAW

## Pros and Cons for Brownfields

### Con: Limitations regarding access (cont.)

-  With regard to the Property B example, the EA could conceivably initiate a civil action asking the court to authorize it to conduct environmental investigations as part of a larger plan to assess the threat and carry out a remedial order, but:
  - ★ court actions cost money
  - ★ court actions take time (statutory priority helps)
  - ★ the UBL is not designed to carry out environmental remedial plans; may be preempted by state/federal

# UNSAFE BUILDING LAW

## Pros and Cons for Brownfields








### Con: Administratively burdensome

- somewhat complex administrative process (new CEOs help)
- stringent notice requirements to protect due process rights of those with interests in Unsafe Premises, including mortgagees

# UNSAFE BUILDING LAW

## Pros and Cons for Brownfields

### Con: Costs

-  funding needed for personnel and administrative costs of enforcing the UBL
-  funding needed for performing ordered work
-  Unsafe Building Fund (UBF) established, with funding sources, but:
  -  up-front funding needed to establish and operate program
  -  could be a challenge for the UBL program to ever be self-funded

# UNSAFE BUILDING LAW

## Pros and Cons for Brownfields

- Pro: use of existing executive organizations to administer the UBL
- Pro: applicable to all types of properties
- Pro: emergency authority available
- Pro: repair orders are recorded, so they run with the land
- Pro: continuous enforcement orders now streamline the process, particularly for repeat offenders

# UNSAFE BUILDING LAW

## Pros and Cons for Brownfields

- Pro: The UBF is a dedicated, non-reverting fund with funding sources, including:
  - ★ all recovered work costs and penalties, which must be deposited in the UBF
  - ★ general appropriations
  - ★ grants and donations
  - ★ deposit of certain property taxes (discussed later)



# UNSAFE BUILDING LAW

## Pros and Cons for Brownfields

- Pro: Costs and penalties may be entered as a personal judgment against those with an interest in the property (except mortgagees)
- Pro: Costs and penalties may be certified as a special assessment and added to the property tax bill
  - ★ special assessments are priority liens
  - ★ special assessments are collected like property taxes
  - ★ county executive can obtain title through tax sale
  - ★ probably the most advantageous aspect of the UBL with regard to Brownfields

# Property Tax Collection

## An Option for Control of Brownfields


➔ Ownership and Control - Ultimately, the best way for local government to control the fate of a Brownfield is to *own or otherwise control* the property

📄 Tools to obtain ownership and control:

- 📄 Donation
- 📄 Purchase
- 📄 Eminent Domain
- 📄 Tax Sale

# Property Tax Collection

## An Option for Control of Brownfields

 Purchasing property takes time and requires money:

- appraisals
- offers and negotiations
- public notice
- administrative and transaction costs
- purchase money

# Property Tax Collection



## An Option for Control of Brownfields

### Eminent domain:

- also takes time
- also requires appraisals and offers
- imposes legal costs
- also requires the purchase money (and the amount is less certain)
- public scrutiny (negative impressions)

# Property Tax Collection




## An Option for Control of Brownfields

-  Environmental Liability: Taking ownership voluntarily through donation, purchase or eminent domain could impose environmental liability under Indiana and Federal law
-  CERCLA Sec. 107(a) excludes from the definition of "owner" or "operator" of a facility from which a release of hazardous substances "a unit of state or local government which acquires ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign."

# Property Tax Collection

## An Option for Control of Brownfields


### Environmental Liability (cont.)

-  CERCLA Sec. 107(b) “innocent landowner defense” - exempts from liability one who shows the release was caused by an act or omission of a third party who is not an employee, agent or one acting in connection with a contractual relationship
-  “Contractual relationship” includes land contracts, deeds, easements, leases or other instruments transferring title or possession to property
-  “Contractual relationship” does not include acquisition by a government entity by escheat, through any other involuntary transfer, or through the exercise of eminent domain authority *by purchase or condemnation* – CERCLA Sec. 101(35)(A)(ii)

# Property Tax Collection

## An Option for Control of Brownfields

### Environmental Liability (cont.)

-  Problem: there is a split of authority among federal courts whether an outright purchase or condemnation governmental entities are “involuntary”
- ★ if not involuntary, then local government is liable and can seek only contribution of a pro rata share of remediation costs from other potentially responsible parties (PRPs), rather than imposing joint and several liability on other PRPs

# Property Tax Collection

## An Option for Control of Brownfields

### Environmental Liability (cont.)



- Recent case law applicable in Indiana: *Evansville Greenway & Remediation Trust v. Southern Ind. Gas & Electric Co., Inc.*, 661 F.Supp.2d 989 (S.D. Ind. 2009)
- Held: Indiana law requires any person with eminent domain power to first make an effort to purchase the property before proceeding to condemn; therefore, a purchase by the government is the exercise of eminent domain authority fitting the CERCLA language referring to “the exercise of eminent domain authority by purchase or condemnation.”
- First case authority in Indiana holding that a mere purchase of property by local government does not subject it to CERCLA liability



# Property Tax Collection

## An Option for Control of Brownfields





### Environmental Liability (cont.)

-  **Caution:** The innocent landowner defense also requires that the person claiming it exercised due care with respect to the hazardous substances concerned and took precautions against foreseeable acts or omissions of the third party
-  **Tip:** Document the transaction. In Evansville Greenway, the City of Evansville entered into an agreement with the site owner which referenced the contamination and CERCLA Sec. 107(b) and 101(35)(A)(ii), acknowledged that the City was acquiring the site through exercise of eminent domain by purchase, and stated as a condition to the acquisition the owner's commitment and financial resources (insurance) for remediation of the site

# Property Tax Collection

## An Option for Control of Brownfields





### The Property Tax Sale – The Best Option

-  Changes in the tax sale process effective January 1, 2007 have made it easier for local government to gain control of abandoned properties with tax delinquencies
-  Most Brownfields are abandoned and tax delinquent
-  Remember the UBL? Costs & penalties imposed under the UBL may be certified as special assessments against the property and collected through tax sale if not paid
  -  special assessments have the same lien priority as property taxes and are collected in the same manner

# Property Tax Collection

## An Option for Control of Brownfields





### Limitation: Authority Vested Solely With the County Executive

-  *only* the county executive (i.e., board of commissioners) may obtain title to properties through the tax sale
-  however, the law allows a number of options for the executive to dispose of the property for reuse, including transfer to other government entities
-  the definition of “county executive” includes “the executive’s designee”
  -  allows cities & towns to work collaboratively with the county executive to redevelop the properties

# Property Tax Collection

## An Option for Control of Brownfields




### Advantage: Minimal Cost

-  administrative and personnel cost of a program to identify properties for expedited tax sale
  -  can likely be done by existing personnel
-  no payment required to obtain title
-  county treasurer administers the sale process

# Property Tax Collection

## An Option for Control of Brownfields




### Bonus: Avoiding Environmental Liability

-  obtaining title to and control of a property through the tax sale process is “involuntary” under CERCLA Sec. 107
-  allows the government to seek recovery of remedial costs jointly and severally from PRPs
-  don't forget the insurance policies!

# Property Tax Collection

## An Option for Control of Brownfields






### Double Bonus: Access Without Ownership

-  if a property does not sell at tax sale, the county auditor is *not* required to deed it to the county executive if the county executive determines that the property involved contains hazardous waste or another environmental hazard for which the cost of abatement or alleviation will exceed the fair market value of the property
-  in this instance, the statute provides that: “the county executive may enter the property to conduct environmental investigations”
  -  the only direct legal authority to access property to conduct environmental investigations is found in the tax sale statute!

# Property Tax Collection

## An Option for Control of Brownfields






### Expedited Tax Sale Process

-  county treasurer certifies a list of properties to be sold
-  county executive certifies a list of vacant or abandoned properties with as little as *one* tax or special assessment delinquency to be included in the tax sale
-  expedites getting a property to sale
-  certified properties must be offered for sale separately from other properties
-  be mindful of certification deadlines and coordinate with the county auditor and treasurer

# Property Tax Collection

## An Option for Control of Brownfields

### County Executive's Lien






-  county executive acquires a lien, by law, on *any* unsold property immediately at the end of the sale
-  lien is exercised by the executive requesting a tax sale certificate from the county auditor
-  county executive may then:
  -  sell the certificates, as can any sale purchaser, in the manner prescribed by the statute, or
  -  after a 120-day redemption period, obtain an auditor's deed (reduced from the 360-day redemption period applicable to sold properties, further expediting the process)



# Property Tax Collection

## An Option for Control of Brownfields

### Auditor's Deed

-  extinguishes the taxes and special assessments for which the real property was offered for sale and accruing to the date of the deed, plus costs of the sale
-  vests in the county executive fee simple absolute title, free and clear of all liens and encumbrances created or suffered before or after the tax sale
  -  exception for federal priority liens and tax liens accruing subsequent to the sale
  -  extinguishes mortgages and mechanic's liens
  -  easements, restrictive covenants and land use commitments remain unaffected

# Property Tax Collection

## An Option for Control of Brownfields




### Land Disposal Options

-  Public sale of the tax certificates
-  Transfer to nonprofit corporations for “use for the public good” after a public hearing
-  Transfers under general property disposal statute (I.C. 36-1-11), including public auction sale, sale to adjacent landowners and *transfer to another government entity*
-  Transfer to a redevelopment commission for sale, grant, or other disposition under the redevelopment laws (I.C. 36-7-15)

# Property Tax Collection

## An Option for Control of Brownfields

### Land Bank Option

-  Rather than disposing of the property, the county executive may retain the property and use it as it would any other county-owned property
-  Funding: Property taxes generated in the first year after a property is disposed of must be disbursed to the county executive for deposit in the county general fund, the redevelopment fund, the unsafe building fund, or a housing trust fund
  -  funds must used for purposes related to the use, management and redevelopment of property



Q & A ?

**THANK YOU!**

stewart & irwin pc

## Robert M. Frye, Shareholder

### Attorney at Law

stewart&irwin<sub>pc</sub>

Robert M. Frye is a 1994 graduate of Indiana University School of Law – Indianapolis and a 1989 graduate of the Indiana University School of Public and Environmental Affairs. Prior to and while attending law school, Bob worked in environmental management for the City of Indianapolis, holding a variety of positions with responsibilities ranging from the enforcement of local codes, permitting and inspection, pollutant sampling, performance of Phase I assessments, and oversight and coordination of contractors performing environmental services. From 1995 to 1997, he served as in-house corporate counsel for the City of Indianapolis, counseling local boards and agencies with regard to public works, environmental, municipal and contractual matters. From 1997 to 2000, Bob was an associate with Foley & Pool, LLP, where he practiced civil litigation, real estate, land use and zoning, construction law and environmental law. Bob joined the City of Indianapolis again in 2000, serving for two years as administrator of the City's economic development, real estate redevelopment and property management programs. Bob returned to private practice in 2002, and since 2006 has been a shareholder with Stewart & Irwin, P.C., where he engages in civil and administrative litigation, real estate, land use and zoning, municipal law, construction law and environmental law. Bob continues to advise the City of Indianapolis as outside counsel with regard to redevelopment issues. Bob is admitted to practice law in all state courts in Indiana, the U.S. District Courts for the Northern and Southern Districts of Indiana, and the U.S. Court of Appeals for the Seventh Circuit.



Stewart & Irwin, p.c. 251  
East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
317-639-5454  
rfrye@silegal.com  
[www.silegal.com](http://www.silegal.com)

# Planning and Community Involvement

*Indiana Brownfields Program*

*Presented by Debbie Wilson*

*Managing Principal*

*Engaging Solutions, LLC*

AUGUST 2010

- ❑ Helps Frame Your Efforts
- ❑ Creates Order and Uniformity
- ❑ Demonstrates Forethought/Vision and Direction
- ❑ Directs Your Path
- ❑ Community Engagement and Partnership = 20 total points (ranking criteria in EPA assessment)

WHY PLAN?

- WHAT ARE YOU PLANNING FOR (VISION, GOALS, OBJECTIVES)?
- HOW DO WE ACHIEVE THESE (ACTION PLAN)
- WHAT BARRIERS CAN IMPEDE PROGRESS?
- STAKEHOLDERS
- IMPLEMENTATION SCHEDULE
- WHO IS RESPONSIBLE?
- MEASURING SUCCESS
- DOCUMENTATION

**WHAT ARE THE KEY PLANNING COMPONENTS?**



- COMMUNITY SUPPORT IS NECESSARY AND STAKEHOLDER INVOLVEMENT IS ADVANTAGEOUS
- STAKEHOLDER HIEARCHY - ALL STAKEHOLDERS ARE NOT EQUAL
- STAKEHOLDER ENGAGEMENT SHOULD HAPPEN THROUGHOUT GRANT DEVELOPMENT/PLANNING AND CERTAINLY PROJECT IMPLEMENTATION
- CONTINUOUS SUPPORT HELPS MINIMIZE CHALLENGES

**COMMUNITY INVOLVEMENT/SUPPORT**

- DEMONSTRATES YOUR REQUEST POINTS BACK TO A PLAN
- ENSURES THE PROJECT/LOAN REQUEST IS NOT ISOLATED FROM THE BIGGER PICTURE

**INCORPORATING PLANNING INTO THE  
GRANT/LOAN PROCESS**

- Plan for engaging the targeted community in the project to be funded under this grant
- Extent to which the applicant has identified and established relationship with the partners necessary to achieve the project's goals
- Extent to which the support letters provided by community based organizations involved with the project demonstrate specific and valuable commitment to the project

## Proposal Evaluation Criteria

- GAME PLANNING - MAP OUT KEY POINTS FIRST
- IDENTIFY KEY STAKEHOLDERS AND DECIDE THE BEST WAY TO ENGAGE THEM AND ENLIST INPUT, I.E. (GRANT ADVISORY COMMITTEE, TOWN HALL MEETING, 1:1, CHARRETTE, ROUNDTABLE DIALOGUE, WEBCASTS, OTHER SOCIAL MEDIA TECHNOLOGY, ETC.)
- CONSOLIDATE INPUT INTO THE PLAN/GRANT APPLICATION

## COMMUNITY ENGAGEMENT TACTICS: PRE-GRANT AWARD PHASE

- DO WHAT YOU SAID YOU WERE GOING TO DO
- DETERMINE HOW YOU WILL RE-ENGAGE THE STAKEHOLDERS AND COMMUNITY AT LARGE
- DOCUMENT YOUR EFFORTS AND MILESTONES AGAINST THE PLAN AND BE READY TO ANSWER QUESTIONS FROM STAKEHOLDERS AND PUBLICLY REPORT SUCCESSES

**COMMUNITY ENGAGEMENT TACTICS:  
POST-GRANT AWARD PHASE**

- BE TRANSPARENT WITH KEY STAKEHOLDERS AND THE COMMUNITY - KEEP THE COMMUNICATION CHANNELS OPEN THROUGHOUT THE PROJECT

COMMUNITY ENGAGEMENT: POST-GRANT  
AWARD PHASE

# TIPS FOR SUSTAINABLE PLANNING



**PLANNING SHOULD BE  
STRATEGIC AND  
INCLUDE REALISTIC  
AND ATTAINABLE  
TIMELINES**

**MODIFY THE PLAN AS  
NEEDED - IT IS A  
LIVING DOCUMENT  
THAT WILL EVOLVE  
OVER TIME**





**PLANNING NEVER  
STOPS!**

**ASSIGN A CHAMPION  
TO MONITOR  
PROGRESS**



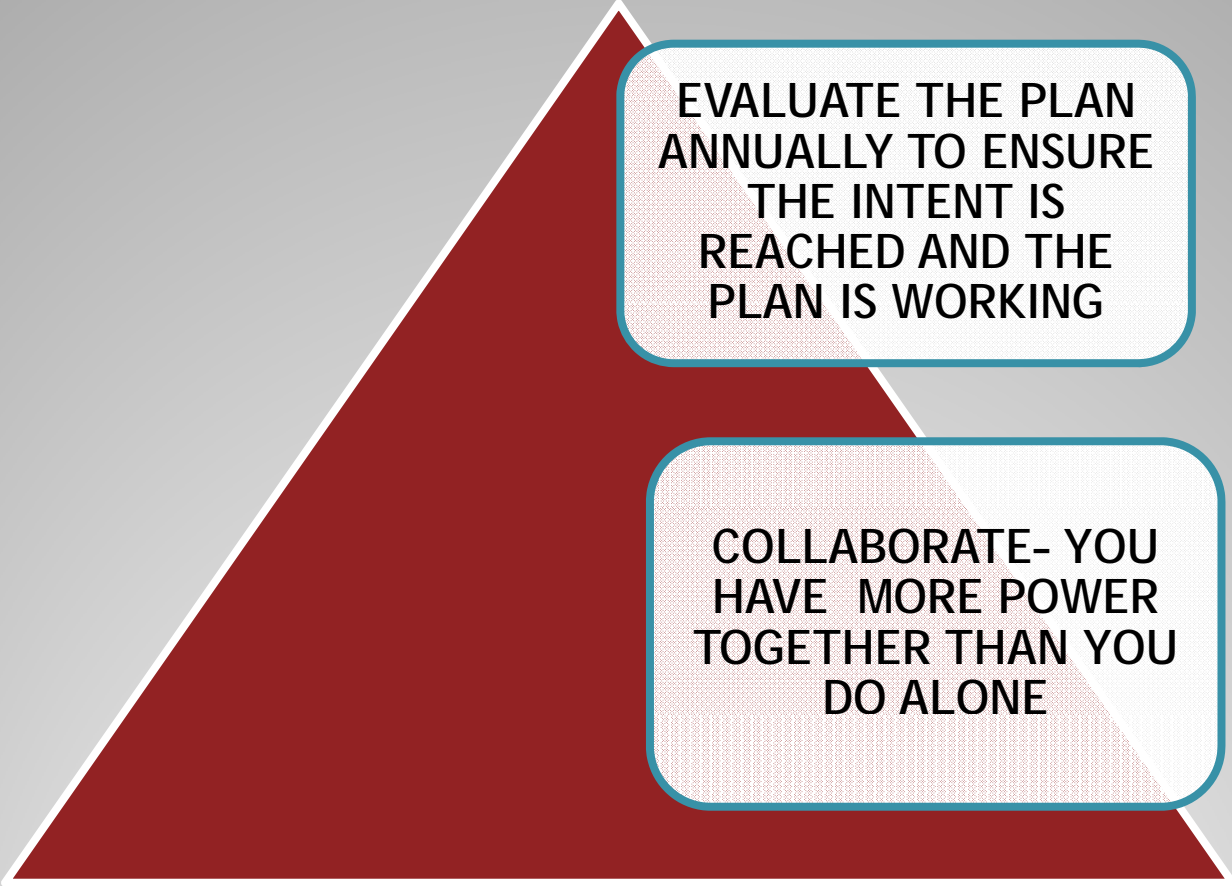
**ASK FOR HELP**

**STAKEHOLDER  
INVOLVEMENT IS  
CRUCIAL AND SHOULD  
BE UNIQUE TO THE  
PROJECT**



**UNDERSTAND THE  
EXPECTATIONS**

**PLANS SHOULD  
ALWAYS DESIGNATE  
WHO IS RESPONSIBLE  
FOR SPECIFIC TASKS**



**EVALUATE THE PLAN  
ANNUALLY TO ENSURE  
THE INTENT IS  
REACHED AND THE  
PLAN IS WORKING**

**COLLABORATE- YOU  
HAVE MORE POWER  
TOGETHER THAN YOU  
DO ALONE**



**BEST PRACTICES AND  
LESSONS LEARNED -  
LEARN FROM OTHERS  
MISTAKES**

- **PLANNING INVOLVES LEADERSHIP AND GRASSROOTS PARTICIPATION INCLUDING COMMUNITY BASED ORGANIZATIONS FROM BEGINNING TO END**
- **Begin with the end game in mind**
- **Research! Don't ignore a possible source of information**

**BEST PRACTICES**

- Environmental Protection Agency ([www.EPA.gov](http://www.EPA.gov)), North East Midwest Institute ([www.nemw.org](http://www.nemw.org)), and Urban Land Institute ([www.uli.org](http://www.uli.org)) are valuable sources
- Network with officials from key state and federal agencies
- Utilize consulting services to augment internal capacity

**BEST PRACTICES**

- Consider Public/Private Partnerships to pool resources
- Talk with other communities who have had successful planning processes/grant applications

**BEST PRACTICES**



**EPA**

**Brownfields**

**Grant**

# Indiana 15 Regional Planning Commission



3/17/08





Hazardous Substances.....	\$200,000.00
Petroleum.....	\$200,000.00

Indiana Brownfields Program (15%).....\$60,000.00

Indiana 15 In-Kind .....\$36,000.00

**TOTAL.....\$496,000.00**

# TASKS.....

1.

Program  
Development

2.

Inventory and  
Prioritization

3.

Up to 20 Phase I  
Environmental  
Assessments  
(ESAs)

4.

Up to 12 Phase II  
Environmental  
Assessments  
(ESAs)

5.

- Up to 12 Remedial Action Plans
- Up to 3 Human Health/Ecological Risk Assessments

# Dos and Don'ts

- Don't give up: Keep applying until you get it right.
- Surround yourself with experts – especially the Technical Assistance to Brownfields (TAB)
- Find a good consultant
- Develop a Brownfields Team
- Develop partnerships – State/counties/cities/towns
- Attend meetings and conferences – EPA Kickoff, Read the State Brownfields Newsletter
- Establish yourself as the “local expert.”
- Solicit input at meetings, in newspapers, and newsletters

## Leveraging of Funds

Katter's Kleaners

CORE of Huntingburg

TRICAP Neighborhood Stabilization Program (App. \$5M)

Town of Orleans White Castle

Town of Birdseye School

Disaster Recovery 2 Demolition and Removal

(Up to \$500,000 each)

# Town of Birdseye School



# Town of Birdseye School





# Town of Orleans White Castle

