

BRTF

NEW JERSEY BROWNFIELDS REDEVELOPMENT TASK FORCE

REGULAR TASK FORCE COMMITTEE MEETING

MINUTES OF MEETING HELD TUESDAY, FEBRUARY 21, 2006
10:00 A.M. – 12:00 NOON

THE BAYONNE MUNICIPAL COURT
CITY COUNCIL CHAMBERS
630 AVENUE C, BAYONNE, NEW JERSEY 07002

Members Present—

Dennis M. Toft, Chairman – Public Member (Development)
Sally H. Dudley, Vice Chairperson – Public Member (Environmental)
Leah C. Healy – Public Member (Community Redevelopment)
Frances E. Hoffman – NJ Department of Community Affairs, Office of Smart Growth
Colleen Kokas – NJ Department of Environmental Protection
Frank Minch – NJ Department of Agriculture
Lauri F. Sheppard – NJ Redevelopment Authority
Nicole Royle – NJ Economic Development Authority

Members Not Present—

Richard Gimello – NJ Department of Transportation
George P. Kelley – Public Member (Regional Planning)
Yuki Moore Laurenti – Public Member (Financial)
William T. Mullen – Public Member (Labor/Trade)
James D. Simmons – NJ Commerce, Economic Growth and Tourism Commission

Other Attendees—

Dan Reynolds – Counsel to the Task Force
Cynthia Weiser – Brownfields Program Assistant, NJDCA, OSG
Alan Miller – Brownfields Outreach Manager, NJDCA, Office of Smart Growth
The Honorable Joseph V. Doria, Jr., Mayor of Bayonne City
Jorge Berkowitz – Langan Engineering and NAIOP
David Brogan – NJ Business & Industry Association
Samantha Bono – Bayonne EDC
Michael Burko – Viridian Partners
J.R. Capasso – City of Trenton
Gary Centifonti – NJ Department of Health and Senior Services
Laura Dodge – Consultant, Excel Environmental Resources
John Fussa – City Planner, Bayonne
David Gulton – CH2M Hill
Roxanne Jayne – Herrick, Feinstein, LLP
Jeremee Johnson – NJ Department of Environmental Protection
Tim Kinsella – Birdsall Engineering
Avie Koenen – Birdsall Engineering
Megan Lang – NJ Highlands Council
Wanda Chin Monahan – McManimon & Scotland
Michael O'Connor – Director, Bayonne EDC
Kenneth Reynolds – NJBA
Elizabeth Spinelli – Director, Hudson County, EDC

WELCOMING REMARKS—

Dennis Toff, Task Force Chairperson, introduced the Honorable Joseph V. Doria, Jr., Mayor of Bayonne City and NJ State Senator, who welcomed everyone. Mayor Doria spoke of the many successful brownfields redevelopment programs in Bayonne City, and noted the need to make certain that the new amendments governing the Hazardous Discharge Site Remediation Program were implemented according to the legislature's intent. Mayor Doria then introduced Michael O'Connor, Director of the Bayonne EDC.

I. PUBLIC COMMENTS—

Mr. O'Connor said that while the industrial sites were a boon to the city's economy in the 1800s, they are now vacant and heavily contaminated. NJ Department of Environmental Protection (DEP), New Jersey Redevelopment Authority (NJRA), other state agencies, and the US Environmental Protection Agency (USEPA) are helping to return these properties to productive use for residential, commercial and recreational purposes.

- The North 40 Park, which was vacant for several generations due to environmental issues—is scheduled for completion later this spring. Many groups made long-term commitments to work together, and more than \$5M was earmarked for remediation of the sites, the largest of which is the former Marine Ocean Terminal, Bayonne (MOTBY). The 50 acres were acquired from the Army in 2003 with the agreement that the city would obtain the funding for cleanup and redevelopment. Bayonne has successfully remediated the site, and under budget.
- The Bayonne Landfill owned by PSEG will be open this April as an 18 hole golf course that includes a 1.5 mile waterfront walkway.
- The MOTBY site and the Bayonne Landfill will provide 2.5 miles of waterfront walkway and access which has been closed to the residents since the 1880's. An important 90-acre brownfields site on Rte 440 South connects with the New Jersey Turnpike, the Bayonne Bridge, and the ocean harbor. It is designated as an area in need of redevelopment, and work will begin in approximately six months providing a shopping center on 30 acres of the site.
- A 65-acre Texaco refinery, closed in mid- 80s, was recently demolished and is being remediated by Texaco. Mixed uses – residential, commercial, recreational, and open space uses are planned for the property.
- The IMTT site was remediated using HDSRF monies and developed into a park.
- Smaller sites are being worked on with HDSRF grant monies and remedial investigation is underway. These sites are being returned to residential use primarily. Approximately 35 such sites have been identified, eight or nine of them, gas stations. Plans for reuse have been adopted and the municipality is working closely with property owners.

Mr. O'Connor then said that, based on how the HDSRF eligibility has been defined with regard to projects in Bayonne, he believes that Senate Bill 277 is not being interpreted properly by NJDEP. The recently enacted bill with its amendments to the HDSRF program is complicated, and the amount of available money is significant. It is important that the issues be worked out so that the new amendments are interpreted as the legislature intended. The state agencies, municipalities, and the private sector need to come together, supported by those with authority to make decisions, to address these issues. It was suggested that the Task Force move ahead on these concerns.

Asked by Task Force members about the issues of concern, Mr. O'Connor said they appear to be mainly a result of vague language. The HDSRF incentive is now being used in a more restrictive manner than in the past with regard to remedial investigation and eligibility. In the past environmental investigation by municipalities was reimbursed 100%. It now appears now that the overall 75 % grant cap in the statute is interpreted as allowing only 75% of the investigative costs to be eligible as a grant.

An additional issue is that of using HDSRF funds in properties that are acquired or that might be acquired by eminent domain. There are concerns that the powers of eminent domain granted

to municipalities under New Jersey's redevelopment laws will be interpreted by NJDEP as conflicting with the "voluntary" provision in the HDSRF enacting language. This in effect will close the opportunity for municipalities to use the Hazardous Discharge Site Remediation Funds grants to inform redevelopment planning decisions in the areas designated in need of redevelopment, whether or not the powers of eminent domain are used. It was noted that in Bayonne, eminent domain has not been used to purchase residential property, but focuses on vacant industrial brownfields sites. Jim also stated that agencies need to focus on what is needed to get sites redeveloped. For example, he mentioned that NJDEP approved a Remedial Action Work Plan submitted by a private party that resulted in a 30 foot mound to exist at the site. Mr. O'Connor stated that this would prohibit the City's redevelopment of the site.

Mr. Berkowitz mentioned that the Department's policies on HDSRF implementation and the use of ACOs and MOAs was effecting brownfield redevelopment. In addition, the Grace Period Rule may have an impact as well. He suggested that there needs to be sensitivities to private/public partnerships at the very top levels of management. He also suggested that a "working group" be formed and supported by the NJDEP Commissioner to work through all the issues that are currently impeding the brownfield redevelopment process and to create an Office of Brownfield Reuse that is "an island unto itself."

Ms. Monahan supported the comments, adding that her company is being told that the municipality's authority under the state's redevelopment act will disqualify them from using HDSRF monies. Ms Monahan questioned this interpretation of the criteria. If Bayonne allowed Exxon to be the dominant responsible party, the remedial action would have called for a 30-foot mound to be placed in the center of the site, which is unacceptable. This would make the land unavailable for business, residential, or recreational purposes.

In addition, Ms. Monahan acknowledged that the NJDEP is tasked with many activities and not given the proper resources to administer them effectively. She pointed out that the Bureau of Fund Management is not only responsible for administering the HDSRF, but they are also responsible for certifying the eligible remediation costs under the Brownfield Reimbursement Program. Ms. Monahan recommended that more staff is needed to administer these financial programs.

Ms Jayne raised a different issue: a situation in an area designated in need of redevelopment where a municipality/redeveloper wished to remediate the site to a higher standard, but the owner/responsible party that is operating under an oversight document with DEP does not want to remediate to a higher standard. It was suggested that the owner should only be liable for the cleanup under the existing oversight document, and that the new developers/municipality would be liable for additional cleanup. The new entities (municipality) would also be eligible for HDSRF grants to determine the extent and nature of contamination and the degree of additional cleanup necessary. This should be true in cases where eminent domain is at issue: the property owner and responsible parties should be liable only for their initially agreed share.

Mr. Kinsella stated that the National Brownfields Association's NJ Chapter has proposed seven policy and five regulatory recommendations, which they were not prepared to present to the Task Force at this time.

Mr. Fussa stated that the municipality was preparing to utilize its Smart Future Planning grant in an area that contained brownfield sites. If access to HDSRF funds is limited to municipalities, from a planning point of view, development will be inhibited.

The Task Force responded that this has been a problem since 1993 when the bill was amended to allow municipalities to undertake eminent domain. At that time, Ms Healey was told that DEP did not want eminent domain to be used to interfere with on-going cleanups.. One or two municipalities had used eminent domain and were attempting to require higher levels of cleanup

from the former owners.

Mr. O'Connor said that, while he is not a proponent of eminent domain, it is necessary with certain brownfields properties. This can easily be resolved if the municipality uses the redevelopment law to entice property owner to redevelop property. The HDSRF issue does not provide an opportunity where municipality brownfields are involved so that it will be exempt from having sites in a redevelopment area. Property owners' concern that eminent domain will take their home is unwarranted. The DEP's interpretation of the wording in the HDSRF program basically kills the program and use of the funds in redevelopment areas, in his experience, eminent domain is used in non-residential areas.

The Task Force explained that the HDSRF concerns relate to existing language in S277. Clearly, planning should be supported, and if the Hazardous Discharge Site Remediation Funds amendments do not account for that option, it needs to be reviewed.

Other concerns with the Hazardous Discharge Site Remediation Funds program were raised.

1. HDSRF and brownfields redevelopment are major programs. The current application review process to HDSRF applications is burdened with too many reviews and too much documentation. Only two full-time people handle the MOAs and oversight documents.
2. Oversight documents: The Task Force has held discussions with DEP about being more flexible when determining what oversight arrangements to require in circumstances when an innocent party takes over aspects of cleanup from the responsible parties when cleanup is already under an administrative consent order.

The Task Force explained that the party who takes over must sign a document that they are responsible, and there is a concern by DEP about the possibility that the innocent party developer would walk away. That is not easily dealt with through an MOA, the best course of action in a variety of circumstances needs to be determined.

The terms BDA (Brownfields Development Area), MOA (Memorandum of Agreement), and ACO (Administrative Consent Order) were described for the benefit of the public, and the various agencies and public representatives of the Task Force.

DEP provided feedback to the members of the public to provide clarification on the HDSRF policy and the MOA vs. ACO issue. DEP offered that the policy regarding an appropriate oversight document is governed by the Oversight Rules, it is not a policy of the Department. In addition, the HDSRF decision with respect to Bayonne, is based on guidance the NJDEP received from the Deputy Attorney General representing the NJ Economic Development Authority. DEP agreed that these issues should be further discussed by all brownfield stakeholders.

Ms Dodge said that her company works closely with municipalities/private developers and that over the years, an increasing number of developers are getting into the brownfields market. Some locations have absolutely no resources, e.g. 80 acres, 50% below poverty level and economically distressed. If such areas were designated as brownfield, they would be closer to getting funds for redevelopment. The bill (S277), as it is being interpreted, would kill the program because of the 75% limitation in poor communities. There is real concern about the onerous 1% surcharge to be put in annually and it needs to be addressed. Development margin and justification may not be there.

In summary, HDSRF issues need clarification on amount of funding under the new amendment, and the eminent domain issue. With regard to the ACO and MOA—the issues are complex. Sometimes an ACO is used when a party wants to know that the buyer is fully

committed. The stakeholder municipality wants to know that clean-up is to be completed on a timely basis. The issue is that the ACO may prevent many projects from happening. The Task Force thanked all the participants for their important comments and suggestions.

II. CALL TO ORDER—

The Task Force Chairperson called the meeting to order at 10:45 a.m.

III. PLEDGE OF ALLEGIANCE—

IV. ANNOUNCEMENT OF ADHERENCE TO OPEN PUBLIC RECORDS ACT—

Dan Reynolds, Counsel to the Task Force, read the adherence to the Open Public Records Act.

V. ROLL CALL—

Cynthia Weiser, Brownfield Program Assistant, called roll. A quorum was present.

VI. APPROVAL OF MINUTES—

Motion to approve minutes of December 21 was made by Lauri Sheppard and seconded by Fran Hoffman. A poll was taken; there were five ayes and three abstentions; minutes were approved.

VII. COMMITTEE REPORTS—

The Task Force expressed its gratitude to Samantha Bono for her assistance in setting up Council Chambers and for providing a continental breakfast for the Task Force meeting.

- **Policy & Legislative Committee**—Leah Healey, Chairperson
A report was distributed by the Policy and Legislative Committee chair (attached).

The Committee chair expressed appreciation for the ideas exchanged during the public comment period, and noted the importance of the statements and experiences shared with the Task Force regarding program functioning and incentives.

Appreciation was expressed to the legislature and governor for adopting A1633/S2116 to support the brownfields inventory. It was stressed that the Task Force will need to secure an annual appropriation to continue the inventory activities.

- **Data & Marketing Committee**—
Committee Chairperson, George Kelley, was absent on vacation, and items addressed by his committee were included in the Brownfields Program Director's Report.

VIII. BROWNFIELDS DIRECTOR'S REPORT—

- **Report to the Transition Team**
The Brownfields Redevelopment Task Force Report to the Transition Team was completed, printed, and distributed to two of the committees on Governor Corzine's Transition Team. Initial feedback indicates that the report was well-received. Additions are being made to this report to produce a more complete report to the Legislature and the Governor. Printing and binding was generously provided by Task Force member George Kelley.
- **HDSRF Program and Use of DEP Oversight Documents** —
A meeting was held to discuss concerns with implementing the new amendments to HDSRF. DEP, EDA, and OSG/Task Force discussed several problematic areas. Recent applications for HDSRF monies based on the new amendments to the program raised the possibility of exhausting the fund. In addition, there was concern about the reasonableness of projected costs by some consultants and that this would pose an unnecessary drain on the fund.

It was recommended that in cases where the cleanup costs are high, a staged funding agreement be negotiated to cover costs that would realistically be spent from year to year. In addition, it was recommended that in situations where consulting companies request what

appears to be unreasonable cost reimbursement, to work with the consultant and applicant to reach a mutually agreed upon cost projection.

It was additionally agreed to hold a meeting to review other issues of concern with regard to the Hazardous Discharge Site Remediation Funds program. The Task Force, OSG, DEP, EDA, and others from the private sector would be included.

Problems with the new amendments include the interpretation of the wording that would provide only up to 75% of the cost of environmental investigation (PA, SI, and RI) to municipalities. It was remarked that ways to resolve that problem are being debated, and a legislative fix may be required.

DEP's selection of oversight documents was also discussed. There was general agreement that options other than requiring that an innocent party enter into and Administrative Consent Order (ACO) when that party assumes aspects of cleanup when a property is already undergoing cleanup under an ACO, should be considered. DEP will hold internal discussions about this and propose a method or methods to address the problem. This issue, as well as the interpretation of HDSRF amendments and general program functioning are priorities of the Task Force.

- **Brownfields Redevelopment Interagency Team up-date—**

Two landfill projects were reviewed by the BRIT in February:

- National Park is proposing a mixed-use project along the river that would include commercial uses, open space and linked bicycle trails as well as some housing
- Bellmawr (Camden County) presented a project that is comprised of a convention center and hotel complex with high-rise housing.

A marina and wetlands protection is an additional element of the plan. This project is closely linked to the NJDOT.

In addition, a series of closely situated small properties in Jersey City were previewed for a future BRIT meeting. The Director of the Hudson County Development Agency, Elizabeth Spinelli, participated in the preview.

BRIT projects for the March meeting include:

1. The Summit Transfer Station project, which proposes to consolidate and continue transfer station activities and utilize the remainder of the existing transfer station for ball fields.
2. Elizabethport – a large mixed – use project requiring a 30 year build out, and would include a strong focus on water uses and the arts. High rise apartments, first floor retail, a marina, a transit station stop, and training and performance areas for the arts are included in the land use. Green building techniques would be employed throughout this project.

Over 80 projects have been reviewed by BRIT.

A special BRIT meeting to introduce non-profit organizations to state brownfields incentives and process is being scheduled. This program is a response to the increasing interest on the part of non-profit organizations in brownfields projects, and it responds to the Task Force priority of addressing needs of underserved brownfields stakeholders.

- **State appropriation and other funds for Brownfields Inventory and related Task Force activities**
Regarding A1633: the \$285,000 State appropriation for the statewide brownfields inventory and related Brownfields Task Force activities is a one-time occurrence. In order to spend the money, the Task Force is required to adopt a resolution proposing how the money will be

spent. The proposal is that the money be spent over a 2-year period, including the hiring of an inventory manager and C-MAP coordinator, travel expenses, outreach and education.

Two additional grants are being provided by USEPA. An existing grant from USEPA for the period of 10/1/05 to 9/30/06 is awarded to Department of Environmental Protection, from which 17%, or \$119,000 is channeled to DCA for the Task Force under a memorandum of agreement. That grant provides for hosting, maintenance and enhancements of the NJ Sitemart existing staff support and outreach.

DEP stated that they needed more time to study the budget before voting.

Upon further discussion, DEP agreed it would vote to move forward the resolution including the budget to fund a portion of the inventory activities, with the caveat, that other grants provided to DCA by DEP could be effected. However, Committee Council stated that a resolution is sufficient to identify the purpose of monies used by the Task Force.

- **Statewide Environmental Insurance—**

Task Force members were polled to determine whether the Spring or Fall would be preferable for holding this event, since the New Jersey League of Municipalities could assist in the planning of this event at either time. It was decided that it would be best held in the fall. The proposed symposium on statewide environmental insurance has just received approval from the DCA Commissioner, but funding is still in question. Plans to date include a conference that laps over two days, beginning in the afternoon of the first and ending with lunch the second day. USEPA research consultants that specialize in environmental insurance applications are assisting the Task Force in planning and running the symposium. The participants will come represent a wide cross-section of brownfields stakeholders, and some of the panelists will come from other states that have developed statewide environmental insurance programs.

- **Brownfields Inventory**

Activity is limited due to the lack of staff, however two interns are assisting with entering data: one is entering sites that have been presented to the BRIT and another is adding Planning Area designation for each site.

- **Brownfields to Greenfields Outreach** – DEP, EDA and OSG/Task Force are collaboratively planning several events to promote the cleanup and reuse of brownfields into open space, recreational and conservation purposes. The initial Task Force training program, held in conjunction with the League of Municipalities, will be held later on in the year – perhaps in the Fall when the League's schedule permits.

- **Environment Justice—**The Task Force will be establishing closer communication on the environmental justice community. Jereme Johnson, NJDEP, who provides support to the EJ Advisory Committee, is in attendance today as part of that effort.

- **Task Force Membership—**

The Task Force has recommended increasing its membership by two members. One is a public member from an academic institution with the specialty of economics and planning; and the second is the Department of Treasury. Sponsors must be secured and legislation introduced. The recommendation has been forwarded to the DCA Legislative Staff for action.

- **Portfields Incentives—**

The EDA and NY/NJ Port Authority are moving forward with their joint study and are engaged in a promotional effort in Portfields. In addition, DOT and the SiteMart are awaiting results from a grant to NJIT to complete the initial port brownfields database and enter the data into the NJSiteMart

IX. CHAIRMAN'S COMMENTS—None

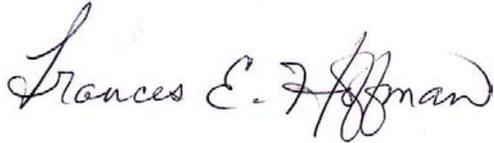
X. TASK FORCE MEMBER COMMENTS—

It was noted that the "Subsequent Purchaser Natural Resource Damages Certification," which was a priority for the Task Force to protect innocent purchasers from liability for Natural Resource Damages has been developed. This certificate addresses concerns that the Task Force had regarding A2444 from the last legislative session.

The chairman spent several minutes commending the members of the Task Force for their contributions.

XI. ADJOURNMENT—Ms Hoffman moved to adjourn the meeting; Mr. Minch seconded. The meeting was adjourned at 12:10 p.m.

Respectfully submitted,



Frances E. Hoffman
Secretary, New Jersey Brownfields Redevelopment Task Force

Prepared by Cynthia Weiser, Primary Brownfields Program Assistant
6/14/06