Brownfield Development Procedure Design

Statement of Purpose

The discovery and rejuvenation of Brownfield properties within the United States presents specific dilemmas in intergovernmental coordination and determination of future use. The following process design, based on the principles of *Alternative Dispute Resolution*, is intended to serve as a model structure for the highest level of inclusion by relevant stakeholders and the most efficient and responsible means of addressing the issues surrounding the detoxification and use determination of these contaminated sites.

Objectives of the Brownfield Development Initiative

• Avoid inherent jurisdictional disputes in favor of coordinated efforts.

• Neutralize negative power dynamics.

• Build consensus without getting mired in the process.

• Encourage thoughtful, long-term planning.

• Secure support of key people

• Build teamwork without losing accountability
The following model represents the typical Brownfield site referral process. In its current state, the process is impeded by conflicting community interests and aversion to cost responsibility. The highly technical nature of the environmental analysis and clean-up procedures is further perplexed by the difficulty of managing competing community stakeholders’ views and interests.

The following procedure design proposes the institutionalization of managing Brownfield site development with the assistance of a neutral third party facilitator. The federal Environmental Protection Agency assumes the responsibility for maintaining a database of qualified mediators to be selected by the stakeholders. A consensus agreement on a mediator not included on this list will pre-empt the EPA mediator/facilitator database.
selections. The EPA, as part of the EPA Brownfield Initiative will underwrite the cost of mediation.

Due to the inherent complexity of Brownfield redevelopment projects, this function would occur simultaneously with the assessment and identification of the Brownfield site and initial citation onto the National Priority List. Research of past interventions into Brownfield redevelopment projects show the majority of the effort is spent in the unraveling of conflicts acquired in the early stages of site analysis and discussion.

The proposed process of project management according to the principles of Alternative Dispute Resolution will be divided into the following three categories for further explanation, *Building the Foundation, Exploring Options, and Seeking Agreements.*

**Building the Foundation**

From the moment the EPA first identifies a site as a potential Brownfield the probability of stress and miscommunication begins to escalate. The costs of cleanup are highly prohibitive and the attempts to synthesize the conflicting public views are perplexing.
Once the Proprietary stakeholders have chosen a neutral, third party facilitator the elected representative will initiate a series of interviews and conduct an environmental scan in order to complete a situation assessment regarding potential issues surrounding the efforts to redevelop the site. A Public hearing is scheduled according to EPA requirements and secondary stakeholders will likely emerge in this process. By secondary stakeholders I refer to those who have interests, but not fiscal responsibility or threat of enforcement violations pending the outcome. Once all stakeholders have been identified, the mediator will schedule a Stakeholder meeting to address organizational concerns necessary to the success of a participatory decision making process. At this meeting, input from the public hearing will be shared and evaluated. Delegates will be selected to represent the various invested parties. Committees will be established to assimilate and consolidate overlapping interests and positions to avoid duplicative efforts. The option for additional organizational meetings will be introduced at this time. The goal of this initial process is not to solve the problem, but identify the participants and their divergent views and commonalities.
Exploring the Options

After specific areas of potential conflict have been identified, the ADR representative will function as a mediator, or mediation coordinator, between exclusive parties with apparent opposition.

This stage will focus on developing Stakeholder specific work groups to address areas of concern or in need of potential solutions. A variety of techniques can be employed at the discretion of the facilitator and supporting associates. Roles and Responsibilities will be clarified between Stakeholders.

If highly divisive or volatile issues emerge in this stage and the conflicted stakeholders do not remain committed to the consensus seeking process they will have the opportunity to initiate litigation and abandon the facilitated effort in favor of the EPA sanctioned deadline for compliance. If the conflicted parties so desire, they may return to the stakeholder at-large group and address their concerns to the group as a whole.

Opportunities for adjustments and concessions from other stakeholders may enable the group to surmount the impasse. If favorable options emerge
from these meetings, the parties will work to draft guidelines for the assignment of responsibilities and division of tasks.

At this stage certain benchmarks should be resolved, the following examples represent the major areas of conflict regarding brownfield initiatives.

- Determine funding responsibility and fiscal management of process.
- Assign a Redevelopment Authority Committee to manage the administrative process.
- Examine and assess multiple charettes regarding community interests and initiatives.
- Selection of future use plan or statement of intent
- Establish time frames for negotiation process, absolution of effort, project implementation, projected completion date.

**Seeking Agreement**

This stage of the participatory process is tantamount to the end game. The possibility remains for a failed effort without careful management of communication and documentation. The election of a redevelopment authority committee represents the ratification of accepted agreements built
in mediation. This group will establish protocols for funding and managing the fiscal responsibilities of the project. A fiscal representative of the primary proprietary stakeholder is a logical selection to chair this committee. This committee will coordinate with the facilitator to review the process and address new and emerging conflicts which threaten the success of the collaborative effort. If conflicts arise, the aggrieved parties will revert to an earlier stage of the process to attempt reconciliation. If consensus is not reached the aggrieved parties may revert back to the stakeholder-at-large stage for reconsideration and mediation attempts.

If the process proceeds successfully, the Redevelopment Authority Committee will develop the agendas and timelines with the consultation of field-specific professional associates. This group will document decisions, facilitate the signing of contracts, and establish a separate Stakeholder Oversight & Review Committee to assure accountability and equitable practice.

**Conclusion**

If this process is followed, and accompanied by a shared commitment to a fair and efficient solution to redevelopment, the Stakeholders will most certainly save money and time by avoiding litigation. The federal EPA pilot
The program on Brownfield initiatives is resulting in many successful collaborative efforts, and no two alike. By using conflicting community interests as an asset to address multiple issues and concerns of the public, the proprietary stakeholders are more likely to find allies willing to share cost and responsibility in exchange for use considerations. The EPA, a sponsor of the partnership-building process will represent a powerful technical and administrative ally as opposed to a regulatory bureaucracy.

The following flowchart represents the progression of ideas and relationships between specific stages of the consensus-seeking process. The application of this model to an individual project would, of course, reflect a unique adaptation of the overall process design. The consistent elements of identifying stakeholders, building a foundation, addressing concerns and exploring options, and seeking consensus, accompanied by prudent project management should result in fewer litigation attempts and more cost-effective use of resources. Failure to achieve a collaborative result will release clean-up authority to the EPA as stated by law. Proprietary parties are subject to the full cost of cleanup as determined by the EPA.