

NATIONAL BROWNFIELDS COALITION



September 28, 2022

Good morning, Chairman Carper, Ranking Member Capito, and Members of the Committee. My name is Michael Goldstein. I'm the Managing Partner of The Goldstein Environmental Law Firm, a principal in the environmental redevelopment venture, Goldstein Kite Environmental, founder of The Goldstein Brownfields Foundation, a charter member and the first president of the Florida Brownfields Association, former Chairman of the Miami-Dade County Brownfields Task Force, Steering Committee Member the National Brownfields Coalition, and Chair of its Public Policy, Redevelopment Incentives, and Regulatory Partnerships Committee. The National Brownfields Coalition is a non-partisan alliance of public interest organizations, academics, as well as public and private sector professionals who raise awareness about, as well as develop and advocate for policies and practices that support the equitable remediation and redevelopment of brownfields nationwide. The Coalition is jointly managed by Smart Growth America and the Center for Creative Land Recycling. We advocate for protecting public and environmental health sustainably and equitably, by removing or containing contaminants in the estimated 400,000 to 600,000 brownfields sites across our great country. By working across sectors and fields, practitioners and advocates are able to better confront environmental contaminants and return these lands to productive use.

It is a singular privilege and honor to be here to provide a stakeholder's view on the Brownfields Program Reauthorization the U.S. Senate Committee on Environment and Public Works.

My remarks today are presented in my capacity as a representative of the National Brownfields Coalition and informed by three decades of experience assisting businesses, local government, and community stakeholders remediate, redevelop, and reuse contaminated sites. Much of this work - difficult, challenging work - occurs in communities of color disproportionately burdened by human health risk, financial disinvestment, failing infrastructure, inequitable access to medical facilities and fresh produce providers, and the crush of economic gentrification and climate gentrification.

Other witnesses today will no doubt speak to the magnificent Brownfields grant program administered by U.S. EPA, which has transformed how environmentally challenged and marginalized communities think about pollution and economic disinvestment where they live, work, pray, and play and where families put down roots and then take wing generation after generation after generation. EPA's Brownfield Program – and the funding that Congress has increasingly made available going back to

the early 1990s on a non-partisan, non-political basis – has given the voiceless a voice and the powerless agency. This program is forever evolving, innovating, and reinventing. In terms of a regulatory strategy, it's as close to perfect as one could possibly want. Of course, the program is animated by the people who staff it and manage it, so I also want to take a moment to acknowledge and celebrate the EPA staff in the Brownfields Program and the Superfund Redevelopment Program. If there are harder working, more committed professionals in the environmental arena who connect on a human level and make a difference in the lives of millions of Americans every single day, I haven't met them yet.

Turning to the substantive recommendations of the National Brownfields Coalition, we would encourage this committee to double down on the boldness of the Federal Brownfields Program by adding to the resources that are currently available under the brownfields program, not just enhancing those on the books. We need to add more tools to the toolbox by (i) innovating legislatively with respect to financial resources and (ii) providing additional mandates to certain federal agencies to increase the regulatory firepower that communities and stakeholders can tap into.

On the financial side, we would like to recommend that this Committee consider three very specific funding mechanisms that would expand and accelerate environmental restoration, environmental equity and justice, public health protection, and economic revitalization.

First, Brownfields Reauthorization should renew the Federal Brownfield Tax Deduction. Before it expired, the federal Brownfield Tax Incentive allowed a party who voluntarily investigated and remediated contaminated property to deduct its cleanup costs in the year incurred on their federal income tax return. By expensing rather than capitalizing remediation costs and spreading out the deduction over ten years, the deduction was a powerful incentive for private investment in the economic revitalization of brownfields. In the past, developers used the cash savings from this incentive to invest in their next brownfield project, exactly the behavior needed to accelerate cleanup of the nation's contaminated sites. A report prepared by the National Brownfields Coalition showed this deduction dramatically reduced the remediation costs—the largest single expense of taking on a brownfield—by one-third to one-half. The incentive was part of the tax code (IRS §198) from 1997 through 2011 and was approved by bipartisan Congressional majorities six times. This incentive applied very broadly and was not complicated to use. The deduction was available for cleanup of all contaminated property, except for property proposed or placed on the National Priority List. It was used more than 625 times in more than 40 states and was gaining momentum. We recommend that if and when reauthorized, it be available for any contaminated site – Brownfield, Superfund, RCRA, or cleaned up under a similar state program – provided that it result in economic revitalization, public health protection, job creation, climate stewardship, and/or equity and justice.

Second, we are recommending the creation of a Brownfields Loan Guarantee Program as part of Brownfields Reauthorization. This program would combine the more practical aspects of the DOE Loan Guarantee Program with the blanket regional coverage of the New Markets Tax Credit Program to leverage many billions of private sector dollars to fund pools of money for early stage, bridge financing of redevelopment projects that are considered too risky for conventional lenders. In my professional experience, there are countless projects that fail in the concept stage because they are



caught in an unwinnable position – they are not loan-worthy until the environmental risks are cleared but the environmental risks can't be cleared until loan funding becomes available. The proposed Brownfield Loan Guarantee program would supplement and expand on the Brownfields grant and Revolving Loan Fund program by being more quickly and widely available than the existing brownfield financial tools, which are available on a grant basis once-a-year and come with considerable grant administration process and cost. Loan guarantees could be prioritized for certain types of projects, including those that are located in Opportunity Zones or Distressed Census Tracts; qualify as “brownfields” under the federal definition or any state program; involve reuse of sites subject to cleanup under Superfund or RCRA; involve reuse of certain high priority/high risk sites such as landfills or impacted by PFAS; and can demonstrate substantial social merit, such as those that will provide affordable or workforce housing anywhere, access to health care in health care deprived areas, and access to healthy food in healthy food deprived areas or that redress economic, environmental, or public health inequities suffered by communities of color.

Third, we think that Brownfields Reauthorization is an elegant, realistic, and timely vehicle to combat the crisis in this country of families being locked out of affordable housing by high interest rates, higher rents, and ever-increasing construction costs. Specifically, we recommend a significant expansion of the way in which affordable housing is funded at the federal level - additional Low Income Housing Tax Credits for developers who build at the neediest of the Average Median Income levels on sites requiring cleanup. To that end we would like to see:

- an increase the 4% and 9% Low Income Housing Tax Credit (“LIHTC”) under § 42 of the IRS Code to 6% and 12% for affordable housing built on brownfield sites requiring actual remediation;
- a Stepped Up Basis under § 42 of the IRS Code of between 130% to 150% for affordable housing built on brownfield sites requiring actual remediation depending on their location outside of or within Difficult Development Area and Geographic Areas of Opportunity zones;
- and a new, one-time LIHTC in the amount of 80% of cost of the land acquisition to develop affordable housing built on a brownfield site requiring remediation of water resources and/or enhancement of water infrastructure

On the agency resources side, we believe there is a much more active and muscular role that at least three agencies under this Committee’s jurisdiction can play in support of environmental restoration, environmental equity and justice, public health protection, and economic revitalization – the Federal Highway Administration, the Army Corps of Engineers, and the Economic Development Administration. Each of these agencies is deeply resourced, deeply experienced, and deeply credentialed to provide the level support but to date have been functionally absent in the Federal Brownfields arena.



- The Federal Highway Administration should provide technical and financial assistance - including grant funding for design, engineering, remediation funding, and infrastructure improvements - for brownfield redevelopment projects that are transit oriented, that invest in environmental justice neighborhoods, that provide multiple transit options, that compress the distance, the cost, and the impact on climate of connecting people from places where they raise their families and lay heads to places of work, education, recreation, and prayer. We believe these grants should be prioritized where historical highway planning and siting decisionmaking has splintered communities – physically, spiritually, and economically.
- The Army Corps of Engineers likely has more institutional knowledge and the largest working storehouse of environmental data and information regarding the efficacy of cost-effectiveness of contamination assessment and remediation technologies in the United States. As it stands now, there is no transparency to this data and the successes enjoyed and failures suffered by the Corps are not benefitting anyone by sitting on government shelves and in government serves. Access to this information should be democratized and made readily available and readily searchable to stakeholders across the country. Relatedly, the Corps could and should publish guidance documents regarding lessons learned involving cleanup of certain common contaminants at brownfield sites, including emerging contaminants like PFAS, where that type of coaching can greatly benefit both novice and veteran stakeholders managing environmental redevelopment projects. It would also make sense for the Corps to hold technical workshops across the country – one in each EPA region at least – where direct contact and collaboration with stakeholders would likely lead to improved outcomes at the local level. The Corps’ heavy, longstanding involvement and investment with coastal communities and designing and implementing remediation strategies in a coastal community context creates tremendous opportunities for disseminating climate change focused brownfield strategies to stakeholders with little experience but great needs due to their presence on the front lines of sea rise. Finally, the Corps is in a unique position based on its experience and positioning across the country to evaluate meritorious environmental redevelopment projects that are confronted with exceedingly high barriers to restoration as a result of the nature and magnitude of contamination. We would like to see a brownfields grant program administered through the Corps for this purpose, one that emphasizes climate change, sea level rise, acute public health risks, and environmental justice.
- EDA, which has a Congressional mandate to promote sustainable job growth and the building of durable regional economies, has been noticeably absent and sorely missed in the brownfields arena. As a result of a US Government Accountability Report in 2011, US Office of Management and budget selected EDA as the federal agency best suited to serve as lead integrator of federal economic development resources. The basis for this determination consisted of the inclusive, adaptive nature of EDA’s locally-based, regionally driven planning process, its nationwide network of Economic Development Districts, its prior experience leveraging and integrating other federal program resources in support of various competitive



interagency funding initiatives, and the flexible nature of EDA's primary grant programs, including Public Works and Economic Adjustment Assistance. EDA should be tasked with leveraging these historic strengths for at least two purposes: (i) convene a national summit on brownfields economic policy and priorities. The summit should include representatives from no less than the 15 federal agencies listed in the 2021 Brownfields Federal Programs Guide along with state, local, tribal, NGO, Environmental Justice, and private sector stakeholders. The purpose of the summit would be to discuss funding opportunities that work, evaluate those that don't, illuminate potentially powerful programs that are currently invisible, and crowd source new programs that would give more help to those communities in desperate need. We would also like to see EDA develop a standalone Brownfield grant program that pulls from its existing funding appropriations and repackages and reorients them where they can be utilized for a combination of cleanup, public health, equity and justice for marginalized communities, massive job creation, and job training in the green economy with emphasis on climate stewardship, energy security, and creating affordable and transit-oriented housing.

The National Brownfields Coalition thanks the Committee for its consideration of these remarks and I look forward to responding to any questions.

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