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To: Ellen Scalettar, Director of Policy, Research and Legislation, Office of the Senate President Pro Tempore, State of Connecticut
From: Elena Papoulias and Robert Tannenwald
Date: April 2, 2008
Re: Federal and New England State Brownfield Tax Incentives

This memo describes the federal and state tax incentives available to developers of Brownfield sites. Brownfield sites are defined by the Environmental Protection Agency as “real property, the expansion, development, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” The EPA disperses federal funds to all states while within New England only Massachusetts and Connecticut have additional tax incentives. New Hampshire and Rhode Island provide legal incentives to developers and Vermont has provided low-interest loans. Currently Maine does not have any state development incentives for Brownfields.

This description is based on data from EPA reports and state government websites.

I. Description of Brownfields

Despite the cost of their redevelopment, Brownfield sites are areas with great economic potential. However, because the costs borne by a private developer for assessing, cleaning and redeveloping Brownfields often exceeds the perceived benefits of that spending, the federal and many state governments have worked together to incentivize Brownfield rehabilitatory spending. Indeed the EPA finds that “every acre of reclaimed Brownfields saves 4.5 acres of greenspace and every greenspace created, on average, has doubled the value of surrounding properties.” This is especially important when considering the dramatic impact of urban sprawl in many states. As urban residents abandon the city, many commercial and industrial properties are abandoned thereby reducing local property values, tax bases, and therefore tax revenues, and investment possibilities. More often than not such commercial sites are also Brownfields.

The *Small Business Liability Relief and Brownfields Revitalization Act* of 2002, commonly known as the Brownfields Law, is as an extension of the 1980 *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA). The Brownfields Law amended the definition of a Brownfield site to include “real property, the expansion, development, or reuse of which may be

complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” The Act also extended the Brownfield definition to include properties contaminated by petroleum leaks. The EPA is the main federal body that distributes grants, loans and incentives to developers of Brownfields; 25% of their funding per year is specifically allocated to assess, cleanup and develop petroleum-contaminated sites. Within New England, only Massachusetts and Connecticut have additional Brownfield tax credits, while all six New England states have enjoyed federal funding.

II. Federal Funding and Incentives

Federal Brownfield funding addresses the three main areas of Brownfield restoration: assessing, cleaning and developing properties. A combination of several grants and tax incentives provide funds to developers. There are five Brownfield grants: Assessment Grants, Cleanup Grants, Redeveloping Loan Fund Grants, Job Training Grants, and Training, Research and Technical Assistance Grants. As the title of each suggests, each grant addresses a specific aspect of the Brownfield restoration process. The Assessment and Cleanup grants each provide up to \$200,000 per site to finance the assessing, planning, and physical cleaning process. The Revolving Loan Fund Grant provides funds to states, local and tribal governments that make low interest loans to developers. The Job Training grant embodies the anti-urban sprawl spirit of Brownfield developing efforts by providing long-term support to communities. With this \$200,000 grant (taken over two years) residents of communities with Brownfield sites are trained to aid in the short-term cleanup process, while also receiving training in preparation for long-term employment in environmental professions. Similarly, the Training, Research and Technical Assistance Grant provides funds to groups or nonprofits that support the restoration process. These funds come from the commonly named “Superfund” trust established by CERCLA.¹

Another form of federal Brownfields funding comes from the Brownfields Tax Incentive (BTI). Originally enacted in 1997 and extended through December 31, 2007, the BTI is not a tax credit, but acts indirectly as one by lowering a developer’s taxable income by the cost of cleanup. More importantly, the BTI allows developers to deduct the entire cleanup cost in one year, rather than spreading the deduction over several years as is the case with most tax incentives. These benefits further incentivize Brownfield rehabilitation by effectively shortening project timelines and defraying costs while giving developers a greater value for the dollars they spend (inflation erodes future dollar values; dollars saved in the present are worth more).

To qualify for the BTI the property must be owned or in a long-term lease by the developer. In contrast to the federal grants that provide funds for housing reuse sites, the BTI only gives the incentive to properties whose final purpose will be business or income generating. Interestingly, the BTI and federal grants are given to the owners of Brownfields who may have disposed of a hazardous substance or lead to its release or threat of release if they intend to redevelop the property. Most state

¹ In 1980, CERCLA enacted a tax on chemical and petroleum industries that were collected in a trust with the intention of spending those funds on the restoration of contaminated properties that pose health or environmental risks.

policies, including Massachusetts, do not provide any incentive if the developer caused any of the contamination. In either case, properties eligible to receive the BTI must first be verified by an EPA approved state agency.

In addition to providing funds, the federal government also initiated the Targeted Brownfields Assessments and the State and Tribal Response Programs which provide technical and service support to states or individuals assessing or planning on redeveloping a Brownfield site.

Federal Brownfield funding also covers the rehabilitation of methfields, housing and residential reuse sites, smart growth plans and sector-based initiatives to redevelop portfields, mine-scarred lands, mill towns, and railfields. New Bedford and Taunton, Massachusetts have benefited from grants targeting portfields and mill towns, respectively, while the West End of Bridgeport, Connecticut has benefited from the smart growth initiative by redeveloping contaminated property into recreational parks and fields. Other properties, such as properties contaminated by concealed methamphetamine labs, methfields, are eligible to receive federal funding under the Brownfields Law, although this is not the primary solution to the cleaning of these sites. Unlike most state Brownfield tax incentives, federal funds are provided to Brownfield sites which will be restored for residential use. For example, Somerville, Massachusetts, the most densely populated city in New England, benefited from federal funding to convert a 52,000 square foot contaminated property into assisted-living housing. It should be noted that, as is the case with funding to all of these properties, federal dollars make up only part of the funds necessary for these rehabilitation projects. In the Somerville case, a \$100,000 grant was supplied by the EPA. Other funds used for these projects include state and local funds, fundraised dollars, historic rehabilitation state tax credits (where available) and low-interest federal and state loans.

III. State Incentives

From the inception of the original Brownfield initiative to the current Brownfields Law, New England has consistently received federal funds to develop Brownfields. Between 1994 and 2007, the EPA provided \$7,907,315 to Massachusetts, \$6,626,543 to New Hampshire, \$5,896,608 to Connecticut, \$4,943,379 to Rhode Island, \$4,291,663 to Maine and \$2,226,543 to Vermont in Brownfields funding. While New England benefits from these federal funds of nearly \$32 million, only Massachusetts and Connecticut additionally have state Brownfield tax credits and Vermont, New Hampshire, and Rhode Island additionally have Brownfield incentives.

In 1998 Massachusetts signed the *Brownfields Act* into law enabling developers to take advantage of further tax incentives. These incentives include the Brownfields Redevelopment Fund and the Brownfields Tax Credit. The Brownfields Redevelopment Fund offers low-interest loans and grants to developers assessing and cleaning Brownfields in Economically Distressed Areas (EDAs). The Brownfields Tax Credit similarly applies to Brownfield rehabilitation projects only in EDAs. The Massachusetts Brownfields Tax Credit provides a credit of 50% of cleanup costs if the cleanup results in

an area that can be fully used without any limitations; only a credit of 25% of the cleanup costs is provided if cleanup results in an Activity and Use Limitation (AULs prohibit the full use of the property by carrying restrictions on the kind of redevelopment and activities that can be performed on that site). This tax credit can be carried over for 5 years and does contain a recapture provision. A 2006 update to the Brownfields Act now permits the transfer, selling, or assigning of the tax credit to another eligible taxpayer or to a nonprofit organization.

Connecticut similarly provides low-interest loans, grants and tax credits to developers of Brownfields. The Urban and Industrial Sites Reinvestment Tax Credit Program provides up to \$100 million in tax credits over ten-years to support Brownfield development. Unlike the federal BTI which allows deductions within the year the cleanup expenditure is made, the Connecticut tax credit cannot be redeemed until the fourth year of the project. Beginning the fourth year, the developer is only eligible to receive a credit of 10% of the cost per year.² Moreover, this credit cannot be used in conjunction with the 25% corporate tax credit allowed under the enterprise zone program. This differs from Massachusetts which allows Brownfield developers to also take advantage of a 5% Investment Tax Credit and a 10% Abandoned Building Tax Deduction. Similar to Massachusetts, however, there is a carry-forward period of five years and there is a recapture provision.

Vermont and New Hampshire also provide additional Brownfield incentives. In addition to federal funding, the Vermont Community Development Program created the Brownfields Remediation Fund that combines EPA and state funds to provide low-interest loans and grants to developers. This fund, however, was capitalized and has no funds for FY 2008. Attempts to increase funding continue.

Similarly, New Hampshire established a Brownfields Cleanup Revolving Loan Fund that allots low-interest loans between \$50,000 and \$200,000 (although no maximum loan amount is set) to eligible developers. In addition to this fund, New Hampshire created the Brownfields Covenant Program in 2005 (RSA 147-F) which provides legal support to developers. Under this program, the state of New Hampshire provides a *Covenant Not to Sue* and a *Certificate of Completion* to Brownfield developers which facilitate the assessing and cleaning process.

Rhode Island's *Industrial Property Remediation and Reuse Act* similarly protects developers of Brownfields from being sued if contamination on the property is found after the cleanup process (this excludes contamination that occurs after the cleanup). Although no state tax incentives exist in Rhode Island, New Hampshire, or Vermont, these states still benefit from federal funding and their state programs. To date, Maine is the only New England state without additional state tax or legal incentives for developers of Brownfields.

² After another 4 years, the developer is eligible to receive a credit of 20 percent of costs per year.