



WRITTEN STATEMENT FOR THE RECORD

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**ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES
AT THE HEARING**

***BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: REVITALIZING AMERICAN
COMMUNITIES THROUGH THE BROWNFIELDS PROGRAM***

**BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
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WASHINGTON, D.C.

Thank you, Chairman Graves, Ranking Member Napolitano and members of the subcommittee, for the opportunity to testify on “Building a 21st Century Infrastructure for America: Revitalizing American Communities through the Brownfields Program.”

My name is John Dailey and I am an elected county commissioner from Leon County, Florida, where I currently serve as Chairman of the Leon County Board of Commissioners. Today I am representing the National Association of Counties (NACo).

About NACo

Founded in 1935, NACo is the only national organization that represents county governments in the United States and brings together county officials to advocate with a collective voice on national policy, exchange ideas, build new leadership skills, pursue transformational county solutions, enrich the public’s understanding of county government and exercise exemplary leadership in public service.

About America’s Counties

Counties are highly diverse, not only in my state of Florida, but across the nation, and vary immensely in natural resources, social and political systems, cultural, economic and structural circumstances, public health and environmental responsibilities. Counties range in area from 26 square miles (Arlington County, Virginia) to 87,860 square miles (North Slope Borough, Alaska). The population of counties varies from Loving County, Texas, with just under 100 residents to Los Angeles County, California, which is home to close to ten million people. Of the nation’s 3,069 counties, approximately 70 percent are considered “rural,” with populations less than 50,000, and 50 percent of these have populations below 25,000. At the same time, there are more than 120 major urban counties, which collectively provide essential services to more than 130 million people every day.

Many of our responsibilities are mandated by states and the federal government. Although county responsibilities differ widely, most states give their counties significant authorities. These authorities include construction and maintenance of roads, bridges and other infrastructure, assessment of property taxes, record keeping, running elections, and overseeing jails, court systems and public hospitals. Counties are also responsible for child welfare, consumer protection, economic development, employment/workforce training, land use planning, zoning and environmental protection.

About Leon County, Florida

Leon County is located in the “Big Bend” region of northern Florida where the Panhandle meets the peninsula. With a population of approximately 285,000 residents, the county encompasses roughly 700 square miles and contains a diverse mix of urban, suburban and rural communities. Leon County, home to Florida’s state capital, Tallahassee, is the seat of state government in Florida. The county is also home to two major universities, a community college, and a broad variety of intellectual, cultural, physical and natural assets.

In recent years, Leon County has actively engaged in promoting redevelopment, reinvestment and revitalization in our community, which has five designated brownfield sites in our downtown core. In just the past decade, the county has made tremendous strides in redeveloping these sites, transforming them into significant and vibrant components of our downtown and university districts.

Counties of all sizes play a key role in brownfield redevelopment projects

The topic of this hearing is of great importance to my county and many other counties across the United States who are tasked with protecting the environment, ensuring public health and strengthening the economic vitality of our communities. Brownfields are sites that have, or are perceived to have, environmental contamination. They range from old manufacturing and industrial facilities to rail yards, former gasoline stations, areas with leaking underground storage tanks, abandoned mills and mines, and even agricultural land. Successful redevelopment of these sites can reenergize entire communities and their local economies.

In Leon County, brownfields redevelopment has been an indispensable component of our economic development toolkit, and changes to the federal program and its requirements would directly affect our residents and our local economy.

Land use planning, which is a basic function of county government, is key to brownfields redevelopment

Whether in an urban, suburban or rural environment, land use regulations are carried out primarily at the local level in most states. Because this authority rests with local governments, counties can play a key role in brownfields redevelopment projects, in at least two distinct ways.

First, many counties oversee brownfields redevelopment projects directly, because these projects are an extension of the county’s land use authorities. These authorities include developing comprehensive land-use plans, setting zoning ordinances, overseeing environmental monitoring and enforcement, revising transportation plans, creating viable economic development districts, conducting public health evaluations and running risk assessments evaluations at brownfield sites.

Counties work to create an environment that is livable for our residents, conducive to economic growth, protective of our natural environment and resilient against natural and manmade disasters. Local comprehensive land use plans, ordinances and regulations enable us to balance these considerations in a manner that best suits the unique needs and circumstances of our local communities, and we expend significant time and resources to achieve these goals.

In Leon County, we have taken active steps to incorporate brownfields planning into our comprehensive land use plan. This includes a policy to identify, assess and mitigate both publicly and privately owned brownfields. The plan is then used to determine the community's overall priorities for land use, transportation, economic growth zones, utilities and housing. Creating this plan has allowed us to build valuable partnerships to redevelop brownfields, such as those along our Gaines Street Corridor, which I will talk about a little later.

Second, local governments play an indispensable role in addressing public health and environmental concerns at brownfield sites, which can include old industrial factories, previous gasoline stations, hospitals, dry cleaners, underground storage tanks and even abandoned mines.

While these sites generally are not considered "highly contaminated," the types and levels of contaminants present can vary, and may directly or indirectly impact groundwater and the surrounding land and buildings. Types of contaminants include lead, asbestos, petroleum products, treated wood, industrial chemicals and diesel fuel.

Local governments address environmental concerns through implementation of institutional controls (ICs). ICs are legal and administrative measures designed to protect human health and the environment. These may include impenetrable liners to restrict leaking, soil or other containment covers, fences and groundwater pumping and treatment systems. Local governments may also monitor the sites to ensure the controls remain viable. While local governments can implement these measures, they are only a short-term solution and highlight the overarching need to remediate contaminated sites.

As local governments oversee land use authorities, reclaiming brownfields is a vital component of economic development

Redevelopment of brownfields provide counties with a unique opportunity to foster economic growth and community revitalization by providing jobs and creating incentives for private investment. Counties across America can benefit from redevelopment by improving land within their jurisdictions.

While brownfields are often considered an urban feature, brownfields are also found in most rural counties nationwide. Urban counties have limited open space available for new construction; rural

counties may have ample space. Urban counties may have the staff and the technical expertise to remediate and redevelop brownfields, but limited funds to undertake a variety of projects. Rural counties, on the other hand, may not have staff, technical knowledge or funding. No matter whether it's a rural or urban county, targeted brownfields redevelopment can attract new business opportunities, create good-paying jobs, strengthen existing neighborhoods and protect public health and the environment.

Regardless of size, brownfields redevelopment can positively impact local economies in several ways:

First, brownfields and other similar sites are not only eyesores they are often located in underserved communities with depressed property values, high unemployment, low-income housing and high crime rates. However, if the site can be successfully redeveloped, the county can revitalize depressed areas, attract new industry and create good-paying jobs, while protecting public health and the environment.

In my county, Gaines Street, a former brownfields site, demonstrates the impact redevelopment can have on local economic development efforts. In its former life, Gaines Street was a 450 acre, predominantly industrial corridor that included an historic rail depot, chemical warehouses, petroleum distribution centers, a coal gasification plant and a city dump. But in 2000, Leon County, along with a wide variety of stakeholders including the City of Tallahassee, our Community Redevelopment Agency, the State of Florida, university partners, and the private sector, undertook a comprehensive plan to redevelop this corridor, which is still underway today. The Gaines Street Corridor now includes shops, restaurants, pubs, hotels, private housing, infill student housing near both of our major universities and a small business incubator established by Leon County. The Corridor has brought in 200 new jobs, increased taxable value by \$130 million and attracted nearly 3,000 new residents in the past six years. We only expect these numbers to grow after new improvements such as additional hotels, a grocery store, convention center and additional student housing are added.

Second, we have found that when our economic development plans align with brownfields initiatives, our ability to move forward with revitalizing communities is strengthened. For example, where brownfields redevelopment is part of a concentrated downtown revitalization program, the entire project stands a better chance of securing public and private investment, as well as gaining political and community support.

Third, since many urban communities are already built-out, developers sometimes need local and state incentives to redevelop previous industrial sites. In the past, many developers dismissed these brownfields because of the high remediation costs to clean up the site. However, local governments have made brownfields development more attractive by offering different types of incentives such as

tax credits and rebates for entities who redevelop these sites. This is a win-win for both local governments and developers.

For example, Leon County, in conjunction with the city of Tallahassee and the Tallahassee Community Redevelopment Agency, offers competitive loans and issues sub-grants for environmental contamination cleanup through our revolving loan fund program. This fund was seeded through a \$1 million U.S. Environmental Protection Agency (EPA) Brownfields Revolving Loan Grant. Additionally, through our county's Office of Economic Vitality, we help brownfield site owners connect with available resources at the state level that also offers brownfields development incentives.

Fourth, brownfields can be a strong driver for not only economic development, but for job creation as well. According to the EPA, brownfields redevelopment has created over 117,000 jobs nationally. Brownfield projects offer counties and other local governments the opportunity to train low income individuals for higher paying jobs working in the environmental remediation field.

In Washington State, King County's Jobs Initiative (KCJI), offered a brownfields job training to formerly-incarcerated county residents. After completing a 238-hour training course, the students are certified to work as brownfields environmental technicians. As of 2015, the county had trained over 350 participants in environmental cleanup and placed over 260 into jobs that paid an average of \$18.80 an hour, which was well over the median average in King County.

Brownfields reinvestment offers counties of all sizes the chance to stimulate economic growth while also protecting the environment within their communities.

Brownfields redevelopment allow communities to address complex problems through innovative solutions

Not only can brownfields be used to invigorate local economies but they can also be used to address tough environmental challenges.

In Leon County, we are justifiably proud of our 24-acre Cascades Park, a former manufactured gas plant and landfill site, located just blocks from the Florida Capitol in downtown Tallahassee. Completed in 2014, the park includes trails, playgrounds, a 16-foot waterfall, interactive fountains, a war memorial and a state-of-the-art amphitheater for concerts and community events. What most people don't know is that the park's primary purpose is to serve as a stormwater management facility.

Prior to the construction of the park, there were significant flooding problems in nearby office and residential areas. In 2010, the county partnered with the City of Tallahassee to redevelop the site into

a park using both a one-cent sales tax and an EPA Superfund grant. The design of Cascades Park includes a system of box culverts, retention ponds and constructed wetlands, forming a “floodable park” to both mitigate local and regional flooding and improve water quality. Even though we have had multiple significant storms in the past several years, our surrounding neighborhoods have not experienced flooding since the park was built. For these efforts, Cascades Park has brought significant attention to our community, earning state and national awards, such as the EPA’s “Excellence in Site Reuse” award.

Additionally, other counties are looking at how to increase the use of renewable energy and brownfield sites offer developers a way to acquire larger tracts of land that may be unsuitable or too costly to redevelop for residential or business purposes.

For example, Nye County, a rural 18,159 square mile county in southern Nevada consisting of 73.5 percent federally managed lands, has undertaken several renewable energy brownfields projects. Because of a 2002 EPA Brownfields Assessment Grant, the county was able to develop a 33-acre property called Calvada Eye into new county administrative offices and county commissioner chambers. The site has been equipped with solar panels to reduce the electric load of the county offices on the site. The county also redeveloped the former Pink Motel, a brownfields site, with a Tesla Supercharger electric vehicle recharging station.

Finally, counties are using brownfields dollars to address environmental issues from abandoned mine lands (AMLs). AMLs are lands, waters and surrounding watersheds in which mining activities previously occurred. Many of these mines were used in the mid-19th and early-20th centuries, but now lay abandoned. These mines have serious acid drainage issues that degrade local water quality, raise potable water costs, impact aquatic species, cause environmental contamination and threaten tourism dollars.

Known as “Colorado’s Playground,” Summit County, Colorado is considered “rural” with a population of approximately 30,257 residents. However, during the summer months the county draws close to two million visitors due to its natural beauty and proximity to the Colorado Rocky Mountains. In the mid-19th and early 20th centuries, the economy of Summit County, Colorado was heavily dependent on gold and silver mining. After the collapse of the mining industry, Summit County was left with many abandoned mining sites. Because Summit County is heavily dependent on its open space, the county has used EPA Brownfields grant funds to undertake a comprehensive study of its AML sites and, to date, the county has completed or is in the process of finalizing 12 AML reclamation projects. They have also completed site assessments of over 250 mine sites. Through these efforts, the county will preserve undeveloped open space, while improving water quality.

To build upon past successes, there are several ways that Congress can improve and strengthen EPA's Brownfields Program

Even though our communities have made significant strides in redeveloping contaminated sites, they only address the surface of the problem. While it is hard to estimate the actual number of underused or abandoned brownfields, EPA estimates that there are nearly 450,000 brownfields sites nationally. These sites show evidence of at least some contamination, which could trigger environmental regulatory issues and prevent the owners from selling the site, making it very difficult to secure financing or proceed with redevelopment opportunities.

To address these issues, Congress has the opportunity to revise federal brownfields policies to ensure that these sites can return to economically viable properties and move seamlessly into the 21st century.

To that end, I have several suggestions for improving the program.

Increase overall funding levels for EPA's Brownfields grant program

Many brownfield sites across the U.S. remain underutilized because of the limited availability of funds to identify and clean up contaminated sites. Additionally, due to high remediation costs and associated regulatory issues, it becomes very difficult for local communities to fund brownfields projects.

This comes at a time when counties—regardless of size—are experiencing significant fiscal constraints and our capacity to fund brownfields activities are often limited. According to NACo's County Economies report released this February, only one in four of the nation's 3,069 counties have fully recovered to pre-recession economic conditions. This is especially relevant for counties of all sizes that face the stigma of vacant brownfield properties but limited funds to start projects.

Even if counties' economic picture was improved, states put significant restrictions on our ability to generate local revenue. In fact, more than 40 states limit counties' ability to collect sales and/or property tax.

In my county, we continue to recover from the Great Recession, we are fortunate to have a strong and stable economic base. In 2014, Leon County citizens voted to renew a one-cent sales tax that has helped us to transform our community through projects like Cascades Park.

But for other counties, it's a little more complex. As a boom and bust economy, rural Duchesne County, Utah has recently been hit with an economic recession due to low global oil and gas prices.

As a small county of 20,862 in northeastern Utah, the recession has made it more difficult to attract businesses to redevelop derelict industrial sites in the county. However, in 2016, the county received a \$550,000 EPA grant to “further brownfields assessment and redevelopment throughout the target communities” within the county. Through the grant, Duchesne County will play a lead role in identifying brownfield sites and prioritizing redevelopment strategies in all of its cities and towns. Without adequate funds, it would be extremely difficult for the county to undertake this effort.

Unfortunately, at current appropriated levels, EPA’s Brownfields Program has had to turn away many applicants. According to the agency, over 1,700 applicants applied for funds over the past five years but only a small portion received grants due to the limited pot of money EPA had available.

It is essential that federal resources remain available for brownfields assessment, remediation and redevelopment, as well as to provide incentives for private investment. We recommend that Congress, at the very least maintain and/or increase funding for EPA’s Brownfields Program and increase the total allowable cleanup grant amount to allow communities to clean up more sites and provide greater certainty for long-term project financing.

Creation of a multipurpose grant program will allow communities to prioritize brownfield projects

Under the current grant program, there are specific and separate grants for inventory, characterization, assessment, planning or cleanup of a specific brownfield site. That means that applicants must apply for multiple grants to address the various stages of brownfields redevelopment. This is a very cumbersome process for local governments.

We encourage Congress to create a multi-purpose grants that can be used for the full range of brownfields-funded activities (assessment, cleanup, redevelopment, etc.) on an area-wide or community-wide basis. Applicants should be required to demonstrate a plan and the capacity for using this multi-purpose funding within a set timeline in order to qualify for such funding.

Brownfields liability creates disincentives for local governments and other parties

First, virtually every community in America large and small, contains properties that lay vacant for years due to fears about environmental contamination, unknown cleanup costs and potential liability issues. As counties acquire brownfields, our risk of incurring liability under federal environmental laws is a continued concern, and may prevent us from even acquiring the sites in the first place.

This is especially relevant for “mothball” properties which are abandoned brownfields where the current property owner is unreachable or unwilling to discuss a property transfer and/or improve site conditions. In these situations, local governments often have to use eminent domain, tax foreclosures

or other involuntary means to acquire properties. However, due to liability concerns associated with existing environmental contamination, these are typically options of last resort.

Even though a number of laws including the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) (Public Law 96-510) and the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) were enacted to address liability concerns, counties and other local governments quickly learned that if their name was added as an “owner” on the brownfield property’s title as a result of an voluntary or involuntary acquisition, it opened the local governments up to liability issues under CERCLA and other statutes. Although the federal statute contained an “involuntary acquisition” exemption for local governments, the term is narrow, ambiguous and not well understood. Also, there is no exemption for state and local governments that voluntarily purchase properties for cleanup and redevelopment.

A number of states have acknowledged that liability protections for local governments under existing federal laws are confusing. As a result, states have passed clarifying laws, which empower local communities to acquire brownfield sites through involuntary measures, while protecting governments and the citizens they serve. A good example of this hails from New York State.

In 2011, the state of New York passed a bill that permitted municipalities to set up land banks in their communities for tax delinquent, tax foreclosed, vacant and/or abandoned properties, while protecting the local government from liability. In 2013, Suffolk County was approved to establish a Suffolk County Landbank Corporation (SCLBC), which gave the county the authority to acquire, dispose of, and/or redevelop tax foreclosed properties and tax liens, such as brownfield and superfund sites. SCLBC was created to address the 133 tax delinquent and potentially contaminated parcels within the county. As of February 2013, the sites covered 266 acres and represented \$28.8 million in unpaid taxes and penalties, with an annual \$2.1 million burden to Suffolk County taxpayers.

By establishing SCLBC, Suffolk County was able to limit its liability, reduce costs to taxpayers, stabilize its tax base and facilitate cleanup of brownfield sites.

But, depending on state law, this solution cannot be used universally across the U.S., highlighting the need for a more permanent national solution. We believe that Congress should exempt local and state governments from CERCLA liability if they neither caused or contributed to the contamination and exercised due care with known contaminants on a site.

Second, abandoned mines are a huge issue in many counties, especially in the west. Due to the age of these abandoned mines, well over 50-100 years old in many cases, there is no “financially responsible party” and if the current owner of the property did not contribute to the pollution they are held

harmless. And, since AMLs have not been adequately mapped, identifying the source of acid mine pollution is difficult.

While an exact number is unknown, it is estimated that there are hundreds of thousands of abandoned mines nationwide. Even though some of these sites may have already been identified as a priority for cleanup under EPA's Superfund and Brownfield programs, outstanding issues remain, especially for local governments and other groups who offer to clean up the sites. These "Good Samaritans" are not legally responsible for the site, nor are they responsible for the environmental contamination.

However, if Good Samaritans undertake remediation efforts at an AML site, under current law they could be held liable for any ongoing mine drainage, even though they are not the responsible party. Additionally, they would be required to obtain a Clean Water Act (CWA) National Pollution Discharge Elimination System (NPDES) permit to regulate contaminated runoff from the site. The entity would then be legally responsible for any drainage and would be subject to citizen suits under provisions of the CWA, all because a Good Samaritan wanted to do the right thing.

Earlier in the testimony, I discussed the efforts of Summit County, Colorado to clean up AML sites. This effort has not been without challenges since liability issues remain at the forefront of their efforts to preserve open space and improve the environmental impacts of past mining activities. Through help from the EPA and Colorado's Division of Reclamation Mining and Safety, the county has been able to overcome a diverse set of challenges to clean up these sites. However, other areas have been less successful.

While we do not disagree that federal standards should be upheld, we are concerned that the current Good Samaritan policies discourage cleanup activities at AML sites. This, in turn, makes it more difficult for our local communities to address environmental issues that arise from AML sites.

We encourage Congress to pass legislation that will limit liability for "Good Samaritans" performing voluntary cooperative mitigation efforts at abandoned mine sites where there is no financially responsible party.

Finally, after passage of the 2002 Brownfields Revitalization Act, there was significant confusion over which local governments with brownfield sites could apply for EPA's brownfields grant programs. As part of the Act, only those entities that conducted "all appropriate inquiries" on prior brownfield site uses before purchasing the property were granted liability protection.

Since this provision was only applicable for properties acquired after 2002, brownfields properties obtained prior to 2002 were left in limbo, because they were unable to document previous "all

appropriate inquiries.” As a result, only those properties acquired after 2002 are eligible for EPA’s grant program while sites acquired before 2002 are ineligible to apply for the grant. This leaves numerous municipally-owned contaminated sites across the U.S. in abeyance since local governments have limited options to evaluate and redress environmental issues at the site.

In order for us to reduce the number of brownfields nationally, Congress should open the grant program to all local governments that acquired brownfields both before and after 2002, provided that the applicant did not contribute to or cause the contamination.

In conclusion

Chairman Graves and Ranking Member Napolitano, brownfields redevelopment is important for counties of all sizes. In areas where the job and housing markets are shaky, investing in remediation, cleanup and redevelopment may create additional revenue for counties, as well as provide many economic benefits for our residents. In addition, brownfields redevelopment can preserve a community’s culture, while addressing environmental concerns and constituents needs. Finally, through brownfields redevelopment we can not only transform communities, but we can also lay the groundwork for a new and better future.

Thank you again for the opportunity to testify today on behalf of America’s 3,069 counties. I would welcome the opportunity to address any questions.

Attachment:

- About Cascades Park, Leon County, Florida

About Cascades Park



Cascades Park is the crown jewel of parks within downtown Tallahassee. It is “a major stormwater management system cleverly designed as a world-class park.” The park is approximately 24-acres along a stream which is south of the Florida Capitol building. This area remained closed to the public for many years due to the soil and water contamination from among other things, coal tar released by a manufacturing gas plant. The remediation of the Cascades Park Gasification Plant Superfund site was a massive environmental accomplishment that went above and beyond what was required by regulation. The assessment and remediation was completed at a cost of approximately \$12 million, with most of the 85,000 tons of soil removal being completed in 2006. The cleanup paved the way for the park’s development, which now includes numerous recreational, cultural, educational and environmental aspects that are integral to this park’s overall theme.

From the early 1900s until the mid-1950s, the City of Tallahassee operated a manufactured gas plant (MGP) on the southeastern edge of the Cascades Park site. The plant converted coal into gas to offer as lighting and heating fuel for the City’s residents. Operations released waste products at the site, and deposited municipal solid wastes in a city-owned landfill on the southern portion of the site. Industrial MGP operations ended at the Cascades Park site in the 1950s.

The fact that this site was the location of a former coal gasification site that had numerous major underlying environmental issues mandated a heavy regulatory review/process. Although the park was only required to comply with EPA Regulation, Cascades Park went above and beyond what was required. As a result, Cascades Park not only successfully completed the required remediation but in fact obtained the highly prestigious “Excellence in Site Reuse” Award from the EPA for these efforts.

Cascades Park was designed and constructed to achieve multiple goals. The pollution was cleaned up, stormwater management and water treatment systems were installed, and its ‘disguise’ as a beautiful park has brought the community together. Cascades Park now serves as a host for educational and networking opportunities that encourage citizens to become more closely linked with their community. The overall atmosphere communicates a sense of civic trust, and community interaction. Residents strolling through the park, walking their dogs or riding their bikes may run into any number of other citizens who are enjoying the sun, reading the historical panels, or attending festivals. Fencing classes, musicians on the amphitheater stage, and toddler T-ball games are common sights as people return again and again to participate in something new.

