Comments to US EPA on Implementation of the BUILD Act

The Center for Creative Land Recycling (CCLR) and the National Brownfields Coalition (NBC) are pleased to submit comments to the US Environmental Protection Agency (EPA) with our recommendations for implementing the BUILD Act. Together our organizations represent thousands of communities and tens of millions of Americans who have been working over the past two and a half decades to promote the reuse of contaminated properties. As you know, we were instrumental in working with the Congress to secure passage of the BUILD Act, and we are excited about the new tools and resources the law will bring to communities across the country. In preparing these comments, CCLR and NBC received input from dozens of leading brownfields practitioners throughout the country. A partial list of those who provided input is included at the end of this document.

Multipurpose Grants

When the National Brownfields Coalition conceived of and proposed the multipurpose grant concept, the goal was to provide greater flexibility for experienced communities to effectively use federal brownfields funding to respond to and take advantage of changing market conditions and redevelopment opportunities. With a flexible source of funding that can be used on one or more brownfield sites in a relatively rapid and effective way, redevelopment opportunities can be secured without the significant time lag that it usually takes to apply for a cleanup grant, await a potential award, and go through the paperwork process to begin to use that award. Further, a multipurpose award can help an experienced brownfield community use its funding flexibly to best leverage resources and partnerships that maximize community benefits. The ultimate result should be more efficient and robust revitalization that creates jobs and brings new economic opportunities to communities. We provide the following recommendations for EPA’s development and implementation of the multipurpose grant program, which we believe will get this important new program off to a strong start and maximize the revitalization benefits to communities receiving these grants.

1. The BUILD Act statute provides broad latitude for communities to spend multi-purpose grants on those eligible activities that will provide the greatest benefits to their locality. When implementing the law, we strongly recommend that EPA follow Congress’ intent and provide as much flexibility as possible for the recipients of multipurpose grants. Specifically, we recommend the following:

- Grant recipients should be able to use the multipurpose grants on a community-wide basis, for a specific area of the community, or for a specific brownfield property. As specified in the BUILD Act at Section 104(k)(4)(A), (4)(C)(i) and (4)(C)(iii) multipurpose grants may be used for “1 or more brownfield sites in a proposed area”.

- Grant recipients should have maximum flexibility to use their multipurpose grants for the full range of eligible activities, including inventories, planning, characterization, assessments, and remediation. Importantly, there should be no rigid allocation of the specific amount of a multipurpose grant that must be spent on specific eligible uses (assessment, planning, cleanup, etc.). This means that if a community determines that the best use of its multipurpose funds is
to spend the bulk of the award for a clean-up needed for one transformative project, it should have the flexibility to do so. Likewise, if a community determines it will get the greatest value from spending the bulk of its multipurpose grant on site assessments and reuse planning to tee up multiple revitalization projects, it should have the flexibility to use its funds in that fashion.

- EPA should give grant recipients as much flexibility as possible in preparing their work plans and budgets for their multipurpose grants. Likewise, EPA should make it easy for grantees to adjust their work plans and budgets to respond to redevelopment opportunities in a timely fashion.

- EPA should not require comprehensive Area-Wide planning in advance of a multipurpose award, since redevelopment plans typically evolve over time and a community should not be committed to a plan that needs to change. Since funds can be used for planning, EPA should allow communities to flexibly and strategically use their funds for different types of planning and the evolution of plans that will lead to revitalization results.

2. We recommend that EPA not require that a grantee must own a brownfield property at the time of application for the multipurpose award. A core purpose of a multipurpose grant is to allow the recipient to use inventories, planning, and assessment to identify the best sites for cleanup resources. Thus, an eligible grantee may not be ready or able to acquire a brownfield property without having first conducted the assessment and planning activities that determine whether a brownfield property could or should be acquired. Requiring a community to own such a property before they even apply for a Multipurpose award would defeat core reasons for the establishment of a multipurpose program.

3. We recommend that EPA target the multipurpose grants to experienced communities that demonstrate the greatest capability to produce significant revitalization results within five years. The selection criteria should include:

- Past performance in producing revitalization results using EPA grants, other federal grants, and/or state and local funding.

- Past performance successfully partnering with private sector or other qualified developers to produce revitalization results.

- Past performance producing revitalization results in disadvantaged neighborhoods.

- Past performance transforming brownfields into non-revenue producing assets that provide significant community benefits, such as parks and open space, community centers, and non-profit institutions.

- Demonstration of an effective strategy for using the multipurpose grants to respond to current and changing market conditions and opportunities.

4. While we understand the value of spreading EPA grant dollars to as many recipients as possible and thus giving multipurpose grants that may be less than the statutorily-authorized $1 million, we strongly recommend that EPA provide awards of at least $750,000 under this new program. Communities need a sufficient level of funding to produce results at multiple projects and fully take advantage of the flexibility provided by multipurpose grants. In addition, EPA should preserve the ability to give grants as high as $1 million when an applicant can demonstrate clear need for, and
ability to productively utilize, the full $1 million amount. Further, we recommend that EPA provide at least 10 multipurpose grants ranging from $750,000 to $1 million each during the upcoming round of grants. We believe it is important to launch this new program with enough grants to provide some learning that will enable the multipurpose program to improve over time.

5. EPA should, in general, not be awarding multipurpose grant applicants additional assessment and remediation grant awards during the same funding cycle.

Cleaning Grants

1. Assuming that Congress does not significantly increase appropriations for the EPA brownfields grants in the short term, we recommend that the vast majority of clean-up grants should continue to be $200,000.

2. Larger grants should go to projects that justify the higher investment. EPA should consider using the following criteria for awarding grants larger than $200,000:

   - Demonstration that the expected cost of a cleanup will require a grant that is larger than the standard $200,000 level.

   - Demonstration of a very high likelihood of project completion and delivery of the expected community benefits based on: i) past success in brownfields redevelopment or related community redevelopment activities; ii) confirmed leveraged resources and commitments; iii) partners with special expertise; iv) dedicated local leadership.

   - The potential of the grant project to be a “game changer”, including the expected impact of the project beyond its boundaries in catalyzing other investments, initiatives, and efforts in disadvantaged areas; becoming an anchor or safe harbor for others to partner with; transforming community and market perceptions about an area that open new opportunities for activity and investment; and, causing ripples through an area that multiply the positive impacts of the project.

3. EPA should typically limit larger cleanup grants of up to $500,000/$650,000 to one per community per funding cycle.

4. We recommend that EPA maintain the 20 percent local cost share for larger grants. However, the Agency should continue to provide the opportunity for small and disadvantaged communities to apply for a waiver of the cost share based on need and ability to pay. In addition, EPA should consider counting eligible costs associated with other site preparation work related to remediation (e.g., lead paint or asbestos abatement, building removal, debris removal, off-site work to prepare for cleanup activities) as contributions to the cost share requirement.

5. EPA should consider allocating some funds to supplemental cleanup grants of up to $300,000 for sites where a prior $200,000 grant is demonstrated to be insufficient to complete the remediation. These supplemental grants should be reserved for projects that can demonstrate a high likelihood of completion and delivery of benefits to the community.

6. EPA should work with a task force of brownfields practitioners to explore ways to streamline the brownfields cleanup process. Several coalition members have reported that items like QAPP and
ABCA approvals, as well as state review and approval processes can add many months to the cleanup process. It would be very beneficial to develop ways to expedite the cleanup process and thereby accelerate revitalization projects.

7. EPA should consider giving additional consideration in the selection criteria to projects focused in Opportunity Zones. This will create opportunities to leverage additional resources for those projects.

8. EPA should consider modifying the requirement that communities must own the property at the time of submission of a grant application. Many communities do not want to take on the added liability of acquiring a property if they are uncertain about having the resources to remediate the site. At the same time, they are ready to take action if they know they will receive a cleanup grant. To address this issue, EPA could require the applicant to have a written agreement with the property owner at the time of submission of the grant application, which states that the applicant will purchase or otherwise acquire the property if the cleanup grant is awarded.

**Area-Wide Planning Grants**

The Area-Wide Planning grants provided by EPA in recent years have been extremely successful in helping many communities advance their brownfields revitalization visions and projects. The process of developing Area-Wide plans has provided numerous community benefits, including identifying priority sites, developing a better understanding of market opportunities, building community support for local visions and plans, creating new opportunities to partner with private investors and developers, fostering infrastructure and neighborhood investments necessary for brownfields revitalization, and providing a roadmap to leverage additional investment in revitalization such as site assessment and remediation, infrastructure, site preparation and redevelopment.

Congress has clearly recognized that planning is an important component of brownfields revitalization in both the Assessment Grant and Multipurpose Grant sections of the law.

Given the effectiveness of these grants, we strongly recommend that EPA provide at least 20 stand-alone Area-Wide planning grants from $100,000 to $200,000 each during FY 2019. These grants can be made under the Assessment section of the law, and under the Assessment grant competition process, to try to reduce the amount of administrative burden on OBLR staff with respect to an Area-Wide competition. For instance, OBLR could decide on an annual basis to allocation a portion of 104(k)(2) Assessment funding for a targeted number of Area-Wide grants that cycle. The application guidance would allow an applicant to specify whether it seeks to use the Assessment grant primarily for reuse planning purposes akin to the Area-Wide Plans that EPA has successfully conducted over the past several years. If an applicant makes such a specification, it could be required to provide additional information in the application that explains its need for such planning resources, how it would effectively use them, and its capacity to conduct such area-wide efforts.

Here are some examples of successful Area-Wide grants that demonstrate the value of continuing to fund planning on a regular basis:

- The City of Duluth, Minnesota’s Irving and Fairmount Brownfields revitalization plan has helped the community identify priority sites for reuse, guide future capital investment in the area, and leverage the commitment of important revitalization resources. The plan led to the City receiving a $1.1 million grant from the State of Minnesota and an additional $1 million in city and county funds for
the extension of Waseca Industrial Road, a critical infrastructure project that will spur redevelopment of several catalyst sites in the area.

- The City of Milwaukee’s Harbor District Water and Land Use plan identified four catalytic projects that will bring mixed use development, jobs, and new recreational opportunities to the community’s waterfront. The plan led to the creation of a new public private partnership entity, Harbor District, Inc., that is charged with helping the community implement the plan. A new public park will break ground later this month which follows the plan to provide more access to the water’s edge, a critical piece of the plan.

**Grants to Small and Disadvantaged Communities**

The establishment of a new grant program to aid small and disadvantaged communities represents an important opportunity to provide much-needed support for these communities that often suffer from weak markets and insufficient capacity. Given that these grants can be no more than $20,000 each, we recommend that EPA strategically provide these grants in to address the following needs:

1. **EPA should encourage states and tribes to develop ongoing programs to assist small and disadvantaged communities through their Section 128 programs and other resources.** When making grants to assist small and disadvantaged communities, EPA should prioritize those states and tribes that are devoting a meaningful portion of their 128(a) funds and program resources to aiding these kinds of communities.

2. **When applying for the grants, states and tribes should be required to work collaboratively with potential communities to develop project ideas, and should be required to identify specific projects in small and disadvantaged communities they intend to assist.**

3. **Grants should be provided that help small and disadvantaged communities get started in the brownfields arena.** Such grants could pay for inclusive and collaborative community strategies for developing an initial community-wide brownfields strategy that addresses a range of local economic development and quality of life needs, identifying priority sites for revitalization, community visioning, building community understanding and support for brownfields redevelopment, strategies for attracting developers, or developing a resource road map to identify and leverage local, state, federal and other funds to support revitalization.

4. **Grants should be provided in a way that help small and disadvantaged communities address a particular problem that is holding up a brownfields project or plan.** For example, grants could be used to provide legal assistance or engineering assistance to maintain progress at a particular site, helping to complete a brownfields plan, a site assessment or a clean-up, a special meeting to address issues between the developer and the community, or sending in a brownfields SWAT team to move a project along. Funds could also be used for strategic cleanup planning. For example, in Indiana and some other states, it is common to use general liability insurance policies to fund further assessment and cleanup. But contamination (most often groundwater) must be found, and insurance coverage must be identified. Finding these policies is often funded using assessment grant funding through the cleanup planning process. $20,000 would typically cover costs to both identify contamination and find coverage, which would put a site well on its way to cleanup and reuse.
5. Grants should be used in a way that build the long-term capacity of small and disadvantaged communities to lead brownfields revitalization. This could include: education & training for local officials, partially covering the cost of local personnel to run a brownfields programs until they can be self-sustaining.

6. The states and tribes should partner with other technical assistance providers such as the EPA TAB centers, local economic development districts, regional planning organizations, and community development corporations to coordinate and leverage assistance provided to small and disadvantaged communities.

**Local Government Liability Reforms**

The next round of EPA grant guidelines should clearly explain the liability reforms and how they affect the eligibility of applicants and sites. This could include additional information in the guideline narrative about eligible entities that makes clear how both (1) the pre-2002 acquisition liability reform and (2) municipal acquisitions of title by virtue of functions as sovereign affect site and applicant grant eligibility.

**Stakeholders Providing Input for Comments on BUILD Act**

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