SUBJECT: Brownfield Land Banking Study (PED07043(b)) (City Wide)

RECOMMENDATION:

(a) That the Brownfield Land Banking Study, prepared by Conestoga-Rovers & Associates (CRA) dated February 2008, attached as Appendix A to Report PED07043(b), be received.

(b) That Brownfield Land Banking by the City of Hamilton not be pursued as a land management program.

(c) That the City of Hamilton employ the following actions as an alternative to Brownfield Land Banking:

   (i) Continue to utilize funds available through the Brownfield Pilot Project (BPP) Account to identify strategic priority properties for Brownfield redevelopment.

   (ii) Utilize funds available through the Brownfield Pilot Project Account to reach out to environmental professionals and contractors to encourage a strategic partnership role in the remediation of Brownfield sites.

   (iii) To continue targeting the owners of strategic Brownfield properties, making them aware of strategic partnerships and funding opportunities.
(d) That Council request the Province of Ontario to address liability issues and liability responsibilities and the creation of more incentive programs for Brownfield program development as part of new legislative change and Provincial programs.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Conestoga-Rovers & Associates (CRA) was retained by the City of Hamilton in November 2007 to complete background research on best practices in municipal land banking and to determine if the City of Hamilton should proactively consolidate and assemble lands in a public Brownfield Land Bank. The study also included an examination of issues related to the possible clean up the properties necessary to make them “shovel ready” for businesses to locate.

The research concluded that Brownfield Land Banking by the City of Hamilton is not recommended as a land management tool. The primary reasons being the potentially significant liabilities associated with owning environmentally impaired properties, the limited protection from these liabilities for innocent landowners, and the lack of adequate Provincial and Federal funding for Brownfields in Ontario.

BACKGROUND:

At the Committee of the Whole meeting on March 29, 2007, Council approved the following recommendations:

(a) That staff be authorized and directed to retain a consultant to complete background research on best practices and to complete a detailed business case analysis for a municipal Brownfields land banking initiative for Hamilton.

(b) That the cost of the consultant not exceed $100,000.00 funded from Account No. 3620155101 (Brownfields-ERASE-Inv. Study).

ANALYSIS/RATIONALE:

Staff has reviewed the Brownfield Land Banking Study (Appendix A to Report PED07043(b)) prepared by Conestoga-Rovers & Associates (CRA) and provide the following summary for Committee’s information.
In the UK and Europe as a whole, Brownfields are sought after for redevelopment due to high demand for housing. In the UK, this is promoted by upper-tier government imposed targets requiring that 60% of new housing be built on Brownfields. Municipalities and government organizations that have Brownfield landholdings are encouraged to sell them to allow government redevelopment targets to be met. As a rule, local governments do not form Land Banks.

In the United States, municipal governments form Brownfield Land Banks. The Land Banks are supported by enabling legislation, most notably of which is legislation protecting innocent landowners (municipalities) from environmental liability associated with Brownfields acquired and assembled in the Land Bank. Further, funding is available at the State level, which enables the municipalities to acquire Brownfields at market rates for assembly in the Land Bank.

In Ontario, there has been a reluctance for municipalities to undertake Land Banking due to a lack of upper-tier government funding. This reluctance is amplified by the absence of legislation providing protection to municipalities from environmental liabilities associated with ownership of Brownfields. Even those Ontario municipalities that have acquired and assembled properties for comprehensive redevelopment have only done so to facilitate a specific redevelopment project. Land Banking has not been adopted as a general Brownfield land management strategy in Ontario.

Due to potentially significant liabilities associated with owning environmentally impaired properties, limited protection from these liabilities for innocent landowners, and lack of meaningful Provincial and Federal funding for Brownfields in Ontario, Brownfield Land Banking by the City of Hamilton is not recommended as a land management tool.

In the absence of upper-tier funding and protection from environmental liability, it is recommended that the City of Hamilton pursue the following model as an alternative to Brownfield Land Banking:

(i) Utilize funds available through the Brownfield Pilot Project (BPP) Account, as has been done to date, to identify strategic properties for Brownfield redevelopment.

(ii) Utilize funds available through the Brownfield Pilot Project (BPP) Account to reach out to environmental professionals and, contractors to encourage a strategic partnership role in remediation of Brownfield sites.

(iii) Maintain the City of Hamilton’s success as a leader in Ontario through continued targeting of owners of strategic Brownfield properties, making them aware strategic partnerships and funding opportunities.

The above model will allow the City of Hamilton to influence development of Brownfield properties without having to assume ownership of the properties and responsibility for their associated environmental liabilities.
Efforts focused towards cash flow assistance are required to spur the development of Brownfields if this model is to succeed. Large remediation projects where the remedial costs significantly outweigh the remediated market value represent a particular challenge. These challenging Brownfield projects will not be brought forward unless consistent and reliable funding is provided to alleviate projected cash flow issues.

To date, funding from the Federation of Canadian Municipalities’ (FCM) Green Municipal Fund (GMF) has come closest to satisfying this need. The FCM funding falls short, however, in that the funds are neither reliable nor consistent as each project is subject to a year long review by FCM and projects may be funded at 80%, 50% or not at all. Further, funds are not made available from FCM until after remediation is complete, the Record of Site Condition has been filed and building permits have been issued.

**ALTERNATIVES FOR CONSIDERATION:**

Contrary to the consultant’s advice, Committee and Council could direct and authorize staff to further investigate both the financial and legal implications of land banking in Hamilton.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial: N/A
Staffing: N/A
Legal: N/A

**POLICIES AFFECTING PROPOSAL:**

Report PED0743(b), recommendation (b) relates to the processing of an application under the ERASE Municipal Acquisition and Partnership Program (MAPP) which is contained within the City’s Provincially-approved ERASE Community Improvement Plan.

**RELEVANT CONSULTATION:**

The results of the Brownfield Land Banking Study (Appendix A to Report PED07043(b)) were reviewed by Strategic Services/Special Projects, Industrial Parks and Airport Development and the Economic Development Divisions of the Planning and Economic Development Department.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.
Community Well-Being is enhanced. ☑ Yes ☐ No

A vacant, abandoned or underutilized site will now be converted into a new use.

Environmental Well-Being is enhanced. ☑ Yes ☐ No

Human health and safety are protected.

The rehabilitation of Brownfield sites and its development into a productive use makes efficient and effective use of City services as well as protecting human health and safety.

Economic Well-Being is enhanced. ☑ Yes ☐ No

Investment in Hamilton is enhanced and supported.

The ERASE programs lead to effective partnerships with community stakeholders and encourage redevelopment of contaminated and/or underutilized properties. Developers and property owners invest in Hamilton properties leading to property assessment increases.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No

Hamilton continues to lead initiatives related to Brownfield redevelopment. Such initiatives are professionally stimulating and result in Hamilton being a choice for employment to those interested in bettering community life.

CR:db
Attach. (1)
LAND BANKING STUDY

BROWNFIELD LAND BANKING
AS A LAND MANAGEMENT TOOL
IN HAMILTON, ONTARIO

Prepared For:
The City of Hamilton
LAND BANKING STUDY

BROWNFIELD LAND BANKING
AS A LAND MANAGEMENT TOOL
IN HAMILTON, ONTARIO

Prepared For:
The City of Hamilton

FEBRUARY 2008
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EXECUTIVE SUMMARY

Conestoga-Rovers & Associates (CRA) was retained by the City of Hamilton to complete background research on best practices and determine if the City of Hamilton should proactively consolidate and assemble lands in a public Brownfields Land Bank and possibly cleanup the lands to make them “shovel-ready” for businesses to locate.

In the UK and Europe as a whole, Brownfields are sought after for redevelopment due to high demand for housing. In the UK, this is promoted by upper-tier government imposed targets requiring that 60% of new housing be built on Brownfields. Municipalities and government organizations that have Brownfield landholdings are encouraged to sell them to allow government redevelopment targets to be met. As a rule, local governments do not form Land Banks.

In the United States, municipal governments form Brownfield Land Banks. The Land Banks are supported by enabling legislation, most notably of which is legislation protecting innocent landowners (municipalities) from environmental liability associated with Brownfields acquired and assembled in the Land Bank. Further, funding is available at the State level, which enables the municipalities to acquire Brownfields at market rates for assembly in the Land Bank.

In Ontario, there has been a reluctance for municipalities to undertake Land Banking due to a lack of upper-tier government funding. This reluctance is amplified by the absence of legislation providing protection to municipalities from environmental liabilities associated with ownership of Brownfields. Even those Ontario municipalities that have acquired and assembled properties for comprehensive redevelopment have only done so to facilitate a specific redevelopment project. Land Banking has not been adopted as a general Brownfields land management strategy in Ontario.

Due to potentially significant liabilities associated with owning environmentally impaired properties, limited protection from these liabilities for innocent landowners, and lack of meaningful provincial and federal funding for Brownfields in Ontario, Brownfield Land Banking by the City of Hamilton is not recommended as a land management tool.

In the absence of upper-tier funding and protection from environmental liability, it is recommended that the City of Hamilton pursue the following model as an alternative to Brownfield Land Banking:
i) Utilize funds available through the Brownfield Pilot Project (BPP) Account, as has been done to date, to identify strategic properties for Brownfield redevelopment;

ii) Utilize funds available through the BPP Account to reach out to environmental professionals and contractors to encourage a strategic partnership role in remediation of Brownfield sites; and

iii) Maintain the City of Hamilton’s success as a leader in Ontario through continued targeting of owners of strategic brownfield properties, making them aware strategic partnerships and funding opportunities.

The above model will allow the City of Hamilton to influence development of Brownfield properties without having to assume ownership of the properties and responsibility for their associated environmental liabilities.

It is noted however, a significant hurdle to development of Brownfield properties in Ontario today is one of cash flow. At the outset of a project, the Brownfield developer is expected to outlay significant funds for remediation with no expectation of return until the property is fully developed, occupied and generating taxes. Financing through traditional lending institutions as a means of alleviating the cash flow issue is not available due to reticence of such institutions to finance projects with significant inherent environmental liabilities.

Efforts focussed towards cash flow assistance are required to spur the development of Brownfields if this model is to succeed. Large remediation projects where the remedial costs significantly outweigh the remediated market value represent a particular challenge. These challenging Brownfield projects will not be brought forward unless consistent and reliable funding is provided to alleviate projected cash flow issues.

To date, funding from the Federation of Canadian Municipalities’ (FCM) Green Municipal Fund (GMF) has come closest to satisfying this need. The FCM funding falls short, however, in that the funds are neither reliable nor consistent as each project is subject to a year long review by FCM and projects may be funded at 80%, 50% or not at all. Further, funds are not made available from FCM until after remediation is complete, the Record of Site Condition has been filed and building permits have been issued.

While the ERASE program provides incentive for Brownfield redevelopment, it cannot alleviate significant cash flow constraints imposed on Brownfield developers without a supplementary source of funding. If upper-tier government funding can be secured, it can be used to provide timely reimbursement to the Brownfield redeveloper for
remediation costs that would not otherwise be recouped until the Brownfield is fully developed, occupied and generating taxes.

Such upper-tier government funding may be in the form of a low-interest loan to the City that the City can, in turn, direct to Brownfield rehabilitation grants. The cost to the City for such a grant program would be minimal since the developer’s ERASE entitlement would be reduced by an equivalent amount. Instead of paying the developer a portion of the tax increment once a site is developed, the City can use an equivalent portion of the tax increment to pay back the loan to the upper-tier government.

Based on the foregoing, the City of Hamilton should direct its efforts to obtain Brownfield rehabilitation loans from upper-tier governments. The financial model associated with this approach would result in minimal cost to the City of Hamilton to achieve objectives similar to those that might be achieved through Land Banking. At the same time, cash flow issues that typically prevent landowners from undertaking Brownfield remediation projects are minimized.
1.0 INTRODUCTION

Conestoga-Rovers & Associates (CRA) was retained by the City of Hamilton to complete background research on best practices and complete a detailed business case analysis for a municipal Brownfields Land Banking initiative for Hamilton. The purpose of this report is to provide a general overview of land banking as a land management tool in an existing urban setting that will assist the City of Hamilton in development of their Brownfield properties.

Based on this review, a detailed business case is developed to determine if the City of Hamilton should be in the Land Bank business as a means for Brownfield redevelopment. This includes reviewing whether or not the City should proactively consolidate and assemble lands and possibly cleanup the lands to make them “shovel-ready” for businesses to locate.

This study has been prepared by CRA on behalf of the City of Hamilton and provides a background of Land Banking. Land banking models in Europe and North America are presented and summarized along with their advantages and disadvantages. Based on a review of land banking models in Europe and North America, a recommended model for adoption by the City of Hamilton is presented while considering Hamilton’s existing Brownfields program and specific Brownfield redevelopment objectives.

The study also provides a mechanism for identifying or targeting candidate Brownfield properties for redevelopment along with financial modelling and incentive programs to promote their redevelopment. Finally, performance benchmarks are provided for monitoring the effectiveness of the model recommended for adoption.
2.0 BACKGROUND

A Brownfield is an abandoned, idled, or underutilized industrial or commercial property in built-up urban areas where expansion or redevelopment is complicated by real or perceived environmental contamination, building deterioration/obsolescence, and/or inadequate infrastructure.

Land Banking, as contemplated herein, refers to the process of public acquisition of underdeveloped or underutilized land for future development purposes. A Land Bank (Land Banking Company, Land Banking Authority, etc.) is typically set up as a separate and distinct entity. This entity is enabled, through legislation, policies, and by-laws, to acquire lands either through open market acquisition, transfers from non-profit organizations, land swapping, or tax foreclosure. These lands may then be assembled for future use and marketing options.

A Land Bank is a vehicle for managing the disposition of public assets in a comprehensive manner that will maximize local planning and redevelopment objectives. As contemplated in this study, a Land Bank is run by a governmental entity that focuses on the conversion of tax delinquent, tax reverted, and abandoned properties into productive use. Established Land Banks are supported by enabling legislation that allows the local government to overcome some of the legal constraints that otherwise prevent the conversion of public land and public liens on private land into tax generating assets.

A Land Bank is a means of collecting and managing abandoned, dilapidated and/or tax-reverted properties to facilitate their repair and maintenance and, ultimately, to put them back into productive use. When assembled, a Land Bank can provide land and buildings for affordable housing, put under-utilized properties back on the tax rolls, and stabilize declining neighbourhoods by repairing, removing, or redeveloping abandoned and blighted property.

The assembled lands in the Land Bank can be used for the development of green spaces or the creation of developable sites for income generating businesses by consolidation of small otherwise undevelopable parcels (side lots) into larger parcels. Under the right conditions, a Land Bank can clean up tax rolls and facilitate redevelopment of tax delinquent properties.

The objectives of public Land Banking as a land management tool are to manage urban growth patterns; ensure land availability for specific uses; and capture capital gains due to increases in land values created by public investment.
A public Land Bank requires enabling legislation and funding to facilitate its effective operation. A Land Bank requires enabling legislation authorizing it to acquire properties that could not otherwise be conveyed to a publicly owned Land Bank. This would allow the Land Bank to:

- hold property in its own name;
- acquire property through open-market purchase, transfer, swapping, or failed tax sale;
- assemble property and clear title;
- provide certainty to purchasers by offering clear title, extinguishing prior liens, and cutting off other claims; and
- avoid liability under the Environmental Protection Act associated with contamination.

Provincial legislation governing these aspects that affect the ability to operate a public Land Bank include the following:

1. The Planning Act, 1990;
2. The Housing Development Act, 1990;
3. The Municipal Act, 2001;
4. The Social Housing Reform Act, 2000; and
5. The Environmental Protection Act, 1990.

A Land Bank also requires funding, firstly to facilitate the acquisition, assembly, and management of the Brownfields. Secondly, funding is required to facilitate remediation of environmental impairment and make the properties “shovel ready” for redevelopment. In reviewing best practices models for Land Banking in Europe and North America, the mechanisms for enabling legislation and funding were scrutinized to compare and contrast how they may be exploited to facilitate the establishment of a public Land Bank in Hamilton.
3.0 **SCOPE OF WORK**

CRA’s scope of work for completing this study included the investigation and development of a business case to determine if the City of Hamilton should establish a public Land Bank to facilitate Brownfield redevelopment. This includes a review of current best practices to determine if the City of Hamilton should proactively consolidate and assemble lands and possibly cleanup the lands to make them “shovel-ready” for commercial/industrial redevelopment.

The scope of work included the following:

i) The investigation of best practices across North America and Europe with specific focus on those that have proven most successful;

ii) Identification of the advantages and disadvantages of each model identified in the best practices review;

iii) Recommendation of a model as a preferred alternative for implementation in Hamilton;

iv) Specification of the advantages and disadvantages along with the approximate cost and timelines to set up a similar proactive program in Hamilton;

v) Establishment of the criteria to be used for the identification of Brownfield properties for strategic acquisition and assembly;

vi) Development of financial modelling including incentive programs that could be implemented in Ontario under existing legislation;

vii) Development of recommended benchmarks and performance measures to evaluate Land Bank success; and

viii) Investigation of strategic partnerships and joint venture opportunities that could be employed.

The above-noted tasks are detailed in the remainder of this report.
4.0 REVIEW OF BEST PRACTICES

Whether land is contaminated or clean, processes for planning, assembling and financing redevelopment present significant challenges. A nation’s approach to Brownfield redevelopment is influenced by the degree to which it is burdened with contaminated properties as well as by land availability, population density, historic preservation objectives, and societal priorities. In evaluating best practices for Land Banking, CRA reviewed practices in Europe and North America.

4.1 EUROPEAN (UNITED KINGDOM) MODELS

Many towns and communities across the United Kingdom have enjoyed great prosperity as a result of the industrial revolution with large manufacturing facilities once dominating many areas. Yet the subsequent decline of heavy industry has led to abandoned and underutilized facilities and left communities struggling with high crime and unemployment.

This UK experience is reflected in its Brownfield approach. Technically, the UK defines a Brownfield as any previously developed land that is not currently fully in use. A site does not need to be contaminated to fit within this definition. Moreover, the UK does not focus specifically on remediation at these sites, but rather emphasizes regeneration as the overriding goal of its programs. The UK generally uses the term regeneration to refer to comprehensive actions that create lasting improvement in the economic, physical, social, and environmental condition of an area.

There is less government involvement in specific Brownfield sites and private developers initiate three quarters of all redevelopment projects. To help spur additional private sector investment, developers can take advantage of tax credits for remediation costs. This program provides for the crediting of up to 150 percent of cleanup expenditures against taxable income.

The UK also incentivizes private sector cleanups through its landfill tax. This incentive exempts waste resulting from remediation projects from the tax that otherwise applies to materials deposited into landfills. In this way, the costs for Brownfield redevelopment are lowered.

The UK’s efforts to reach out to private developers is complimentary to its policy objectives to reclaim 17 percent of Brownfields by 2010. Similarly, the government has
adopted a goal that 60 percent of new housing will be built on previously developed land, or created through the conversion of existing buildings.

These national government goals in Brownfields redevelopment are supported by a strong local government role in environmental remediation and urban planning. Local government identifies contaminated lands, determines responsibility for site cleanup, establishes remediation requirements, and maintains a public registry of related orders. Through their planning and permitting powers, local governments can co-ordinate cleanup with future land uses, thereby ensuring that remediated properties are suitable for the contemplated use.

In the UK and Europe as a whole Brownfields are sought after, with typical Brownfields in city areas selling for approximately £1M per acre and for as much as £2.5M per acre in London. In addition there are government targets in the UK requiring that 60% of new housing be built on Brownfields. Municipalities and government organisations that have Brownfield landholdings are encouraged to sell them to allow government redevelopment targets to be met. As a rule, local governments do not form Land Banks.

For those redevelopment projects that the private sector does not reach, UK efforts are lead by quasi-governmental/non-governmental organizations and independent public agencies. The power of these entities range from land acquisition to the funding of local regeneration strategies. Embodiments of these efforts are the English Partnerships and the Regional Development Agencies.

4.1.1 THE ENGLISH PARTNERSHIPS

English Partnerships is the national regeneration agency, helping the government to support high quality sustainable growth in England. The English Partnerships was established by the government in approximately 1996 and presented with a package of approximately 70 large colliery sites, some of which had large contamination problems and which, as a package, were worthless. The idea was that the organizations would try to raise funds from the clean land to fund development of the contaminated sites.

Working with a wide range of partners including local authorities, the Housing Corporation, Regional Development Agencies and the Commission for the Built Environment, their role has changed to one of encouraging and attracting inward investment.
The overall aim of The English Partnerships is to achieve high-quality, well-designed, sustainable places for people to live, work and enjoy. Their programs are designed to:

- Increase the supply of high-quality affordable housing, and housing for key workers, in areas experiencing housing pressure;
- Make best use of the nation’s scarce supply of land by identifying previously-developed land and increasing its supply for development;
- Reduce the stock of low demand and abandoned housing in areas suffering low demand for housing, while increasing the supply of new and refurbished high quality housing and amenities;
- Deliver high-quality sustainable urban regeneration in areas experiencing economic restructuring;
- Increase the quality and quantity of private-sector investment in housing and regeneration; and
- Improve regeneration skills.

One of the priority areas of The English Partnerships is strategic Brownfield sites. The English Partnerships core business areas include:

i) Developing a strategic sites portfolio;
ii) Acting as the government’s special advisor on Brownfields;
iii) Ensuring that surplus land is used to support wider government objectives (e.g. the Sustainable Communities Plan);
iv) Helping create communities where people can afford to live and want to live; and
v) Supporting urban revitalization by improving the quality of towns and cities.

As the Government’s specialist advisor on Brownfields, The English Partnerships work with private sector developers, local agencies and, local people and businesses to bring about change. Brownfield sites require careful analysis in order to assess their development potential. This includes sites that are unsuitable for development purposes, but may be considered for ‘soft’ end uses, such as landscaping and tree planting.

4.1.2 REGIONAL DEVELOPMENT AGENCIES

There are nine Regional Development Agencies (RDAs), eight of which were launched in eight English regions and the ninth of which was launched as the Greater London
Authority (GLA). Responsibility for sponsorship of the RDAs falls under the Department of Business Enterprise and Regulatory Reform.

The primary role of the RDA’s is as strategic drivers of regional economic development. One of the RDAs aims is to co-ordinate regional economic development and regeneration. Under the Regional Development Agencies Act 1998, each Agency has the following statutory mandates:

i) Furtherance of economic development and regeneration;
ii) Promotion of business efficiency, investment and competitiveness;
iii) Promotion of employment;
iv) Enhancement of development and application of skill relevant to employment; and
v) contribution to sustainable development.

The RDAs' agenda includes regeneration, taking forward regional competitiveness, taking the lead on inward investment and, working with regional partners, ensuring the development of a skills action plan to ensure that skills training matches the needs of the labour market.

4.1.3 RELEVANCE OF THE EUROPEAN APPROACH

In the UK and Europe as a whole Brownfields are sought after for redevelopment. In the UK, this is promoted by upper-tier government imposed targets requiring that 60% of new housing be built on Brownfields. Municipalities and government organisations that have Brownfield landholdings are encouraged to sell them to allow government redevelopment targets to be met. As a rule, local governments do not form Land Banks.

Redevelopment of environmentally challenged properties is promoted and supported on a national level through The English Partnerships and on a regional level through the Regional Development Agencies. It should be recognized however, that rather than acquiring and accumulating parcels for assembly, the Brownfields handled by these entities are on a case-by-case basis.

Notwithstanding the foregoing, The English Partnerships’ core business of developing strategic Brownfield sites portfolios is worth consideration for implementation by the City of Hamilton.
4.2  UNITED STATES MODELS

Many towns and communities across the United States have enjoyed great prosperity as a result of the industrial revolution with large manufacturing facilities once dominating many areas. Yet the subsequent decline of heavy industry has led to abandoned and underutilized facilities and left communities struggling with high crime and unemployment.

This US experience is reflected in its Brownfield approach, which varies somewhat from state to state. The US approach is discussed in detail in Land Bank Authorities, A Guide for the Creation and Operation of Local Land Banks, authored by Frank S. Alexander, April 2005.

4.2.1  GENESEE (FLINT), MICHIGAN

Michigan boasts the most extensive land bank authority statute in the US. Unlike other states that have enacted statutes permitting local governments to create land banks, Michigan elected to create a “state land bank fast track authority” with broad ranging powers. Michigan’s tax foreclosure law provided that in many instances the properties would become owned by the state, leaving the state of Michigan with a significant inventory of such properties. Local governments in Michigan are now granted the option to enter into agreements with the state authority for the creation of land banks enabling tremendous flexibility in the disposition of tax foreclosed properties. In addition, the land bank has the authority to acquire lands by purchase or lease on the open market.

Governmental entities are granted limited immunity for environmental cleanup costs when ownership of the property is considered to be an “involuntary acquisition”. To ensure that acquisitions by a land bank from local governments would fall within this safe harbour of protection, the Michigan land bank legislation affirmatively provides that governmental immunity for involuntary acquisition extends to the properties of a land bank.

Michigan law expressly confers upon the Genesee Land Bank the authority to establish fees and collect rents, recognizing that the Genesee Land Bank can acquire occupied properties or rehabilitate and lease its properties to third parties. Michigan Public Act 258 enables the creation of a city, county and state land bank authority. This Act also allows a land bank to finance operations by borrowing, selling bonds and collecting a
specific tax. There is also legislation in place to facilitate brownfield financing, specific taxes financing, and funds to clear title.

The land bank authority in Flint is a corporation that is governed by a five member Board of Directors. The board members are drawn from the county (Genesee) and the city (Flint). Genesee County acquires land through the tax foreclosure process. Land is kept in inventory until the proposed purchaser has a site plan and financing approval from a lender. Low value parcels are kept in inventory until their value increases with improved economic conditions to prevent speculators from purchasing land and not improving it. When the land bank elects to transfer property, the consideration is set at fair market value and must be fully paid at the time of the transfer. While the land bank does not have the ability to waive any existing taxes, they can be waived at the discretion of the applicable local government.

The Board of Directors may appoint a “board of advisors” made up of representatives of those who have demonstrated an interest in and commitment to the redevelopment of properties within specific geographic boundaries. The disposition of lands held within the Land Bank is based on the intended or planned use of the property, the nature or identity of the land recipient, and the impact of the transfer on the short term and long term neighbourhood condition. The short term objectives are to reduce the number of foreclosures, reduce the time it takes to demolish structures and increase the number of side lot transfers to new owners. The long term objectives are to increase the number of housing starts and rehabilitations compared to the number of properties that are abandoned.

4.2.2 ST. LOUIS, MISSOURI

Missouri Revised Statutes 92.875 et. seq. provide for the formation of a Land Reutilization Authority. The St. Louis Development Corporation administers the Land Reutilization Authority, which is governed by a separate commission. The commission is composed of one member appointed by the mayor, one member appointed by the superintendent of schools and the City Comptroller. The land bank does not operate with its own employees, and instead relies on the powers and staff of other local government agencies or departments. The City Comptroller takes all the money from tax sale auctions and sale of land bank properties for the City General Fund. Community Development Block Grant funds otherwise pay maintenance employees. The Land Reutilization Authority also receives funding from the Parks Department.
The City of St. Louis acquires up to four properties every year through failed tax sales. Tax foreclosed properties that are not sold at auction are eligible for purchase by the Land Reutilization Authority. Properties that the Land Reutilization Authority does not purchase remain in the city surplus inventory.

Community input is sought at public hearings held once each month. The Land Reutilization Authority maintains a public list of properties for sale within the land bank and there is no priority given to purchasers. Notwithstanding this, the land bank has the authority to determine the terms and conditions for the sale or other disposition of land banked properties. The Land Reutilization Authority has an 18-month right of re-entry. If property improvements are not completed within 18 months of property disposition to private purchaser then the purchaser is required to return the property to the Land Reutilization Authority.

The Land Reutilization Authority uses a standard price list for each neighbourhood for vacant land. Unit pricing is used for buildings, and a reduced price per frontage foot is applied for side lots. Larger parcels require an appraisal. Land sold to non-profit organizations is priced at one-half the standard price for that neighbourhood.

4.2.3 LOUISVILLE, KENTUCKY

Kentucky legislation enable the creation of land banks as independent public corporations created pursuant to inter-local agreements among key governmental entities. The reason is that in Kentucky, property taxes are levied by a series of separate entities – the city, the county and the school board. The legal authority of a land bank in Kentucky derives from state land bank enabling legislation, inter-local government agreements, the land bank articles of incorporation, and the by-laws of the land bank authority.

The Louisville land bank focuses on tax-foreclosed properties since it is required to receive them. It is given a far broader range of discretion as to the pricing for sales to private third parties than other land banks. This is because the state legislation expressly exempts the land banks from property disposition requirements otherwise applicable to local governments and delegates to the local governments the ability to establish disposition policies in the inter-local governmental agreements.

This land bank is expressly prohibited by statute from conveying property to any entity that plans to hold it for investment purposes only and with no intent to use the property other than to transfer the property at a future date for monetary gain. In an effort to
promote residential redevelopment, the land bank establishes a minimum price of $300 per parcel for properties to be used for development of new single-family homes, and in all other cases, sets the minimum price as the property’s tax assessed value.

4.2.4 ATLANTA, GEORGIA

Georgia Code Annotated 48-4-60 provides for the formation of a land bank through the execution of inter-local government co-operation agreements and the creation of an independent legal corporation. Although this has changed, the Atlanta Land Bank was initially structured so as to be the responsibility of the agency staff of the participating local governments (City of Atlanta and Fulton County), with responsibility alternating each year between governments. As this was inefficient, the land bank’s structure was subsequently amended to provide for independent staff directly employed by the land bank. The mayor appoints two representatives and City Council appoints two representatives from districts with high tax arrears.

The land bank has the authority to waive all delinquent property taxes on parcels of land it acquires or conveys. Further, it is allowed to extinguish taxes levied by the school board with the school board’s consent. Any person or entity interested in acquiring a tax-delinquent property from the current owner can enter into an agreement with the land bank providing that if the purchaser acquires the property subject to the outstanding taxes, it will convey the property to the land bank, which will extinguish the taxes and simultaneously re-convey the property to the purchaser. This is known as a conduit transfer and has the advantage of completely by-passing the foreclosure process.

This land bank is given a broad range of discretion as to pricing for sales to private third parties. State legislation expressly exempts the land banks from property disposition requirements otherwise applicable to local governments and delegates to the local governments the ability to establish disposition policies in the inter-local governmental agreements.

The land bank requires that all members appointed to its Board have demonstrated special interest, experience or education in urban planning, real estate, community development or finance related areas. Preference for the disposition of lands held within the Land Bank is in favour of non-profit developers and for-profit developers willing to work within the framework of community improvement plans. The land bank authority will not consider a proposed disposition until the proposed recipient has
presented plans to the Neighbourhood Planning Unit and received a letter of endorsement for the project.

Three quarters of the funding for the land bank comes from Community Development Block Grant funds. The City of Atlanta and Fulton County each contribute approximately $250,000 to the land bank annually. The land bank derives little funding from its operational activities and is required to distribute proceeds from sales back to participating governments to offset original tax delinquency. The Atlanta Land Bank Authority generally transfers land for nominal consideration, reflecting a policy decision that the land bank should be focused on achieving the public policy goal of affordable housing creation.

4.2.5 **CLEVELAND, OHIO**

Ohio State statute allows for any Ohio municipality to establish a land bank. The Cleveland Land Bank is part of the Office of City Planning, Department of Community Development, Division of Neighbourhood Development, Real Estate Program. Department employees manage the program with oversight from city council and the mayor’s office. The county is responsible for foreclosure and title clearance.

This is the only land bank of those reviewed in the US that does not exist as a separate corporate entity. Rather, it is a City program whereby the city owns the property inventory and holds all local governmental powers with respect to the properties. The land bank is operated under the city budget and five percent of the income generated from the collection of delinquent taxes is set aside to fund expedited foreclosures.

The land bank has the authority to extinguish outstanding taxes on properties that are acquired outside the tax foreclosure process as well as the authority to determine the terms and conditions for the sale or other disposition of properties. The land bank receives title to all properties that are not otherwise sold at foreclosure for the minimum bid.

The land bank is mandated by law to convey all properties from the land bank program within 15 years. A side lot program has been established that applies to lots having less than 40 feet of frontage. These side lots can be conveyed to the adjacent property owner for one dollar. Buildable lots are sold by the city for $100 for new home construction.

Informal preference for the disposition of lands held within the Land Bank is in favour of non-profit developers but any party that has submitted a development proposal and
had it approved may receive buildable lots. A neighbourhood planner from the Cleveland planning department is designated as a liaison for each of the 35 neighbourhoods in Cleveland. The neighbourhood planner must sign off on all land bank sales in his/her neighbourhood and all sales must be approved by a neighbourhood advisory committee.

4.2.6 DETROIT, MICHIGAN

As discussed in Section 4.2.1, Michigan boasts the most extensive land bank authority statute in the US. Unlike other states that have enacted statutes permitting local governments to create land banks, Michigan elected to create a “state land bank fast track authority” with broad ranging powers. Michigan’s tax foreclosure law provided that in many instances the properties would become owned by the state, leaving the state of Michigan with a significant inventory of such properties. Local governments in Michigan are now granted the option to enter into agreements with the state authority for the creation of land banks enabling tremendous flexibility in the disposition of tax foreclosed properties. In addition, the land bank has the authority to acquire lands by purchase or lease on the open market.

In 2004, Community Development Advocates of Detroit (CDAD), a trade organization whose members engage in non-profit work, partnered with the University of Michigan Urban and Regional Planning Program to initiate a research project on the new legislation and its potential role in Detroit. This included a peer review of Cleveland, Flint, Atlanta, and St. Louis illustrating how they have used single-purpose entities to facilitate redevelopment of tax-reverted properties. Recommendations stemming from the cited report are as follows:

i) The governing body of the Land Bank Authority should be composed of 11 members selected by Detroit and Wayne County, of which at least eight of the members should reside in Detroit.

ii) Start-up funds should be secured through foundation grants and Community Development Block Grant.

iii) City-owned properties should be incorporated into the land bank over a period of five years as the land bank acquires parcels by city clusters.
iv) The land bank has the legal power to acquire land in the following ways:
   a) Coordinating with the County to purchase tax-foreclosed properties before they go to auction;
   b) Acquiring properties not sold at the county auction;
   c) Purchasing property from public or private entities;
   d) Receiving city-owned properties; and
   e) Receiving gifts of property.

v) The land bank should acquire property using the following criteria:
   a) Requests for non-buildable parcels;
   b) Properties that form a part of land assembly for a development plan;
   c) Proposals for land assembly for community development;
   d) Salvageable structures;
   e) Improved properties subject to demolition; and
   f) Properties that will generated operating resources for the land bank.

vi) The land bank should evaluate the following when considering disposition of lands:
   a) Intended use of the property;
   b) Nature and identity of the transferee; and
   c) Impact of the property transfer on the community.

vii) All land bank property shall be sold at nominal prices.

viii) Transparent sales approval is critical to the functioning of the land bank backed up by an appeals process to prevent arbitrary decisions.

ix) All contracts to purchase property shall have a provision that projects will be completed within 18 months of the transfer.

x) Biannual reports and an annual public meeting should be held to report on land bank progress and identify areas for improvement.

These recommendations are notable as the City of Detroit has gone through a similar process of review that the City of Hamilton is seeking through completion of this study. Notwithstanding this, it is emphasized that substantial groundwork has been laid in terms of state and federal enabling legislation. In addition, start-up funding is available through the federal government (Housing and Urban Development) in their Community Development Block Grant.
4.2.7 RELEVANCE OF THE U.S. APPROACH

The U.S. experience has been one of suburban development, decentralized government and strong private property protections. From an environmental remediation perspective, state environmental agencies now drive U.S. site cleanup decisions. Most notably, state and federal efforts to address landowner and lender liability issues have paved the way for private sector-led redevelopment efforts. Tax and financial incentives together with streamlined regulatory procedures complete the picture.

The U.S. approach to brownfield sites could be characterized as placing greater remediation decision making with the individual states and relying more extensively on the private sector without reliance on powerful government planning efforts. Notwithstanding this, U.S. cities find certain properties or tracts of properties within their jurisdiction represent a significant challenge to redevelopment. In such cases, land banks have been established as a means to revitalization.

As a rule, the land banks are established as co-operative single-purpose entities formed by county and municipal governments. State participation in land banks is in the form of enactment of enabling legislation authorizing the formation of and purpose for land banks. Federal and state legislation limiting landowner and lender liabilities associated brownfields has also fostered a willingness at the local level to establish land banks and assume ownership of such properties.

Finally, funding for the operation of land banks is supported at a federal level through the Community Development Block Grant program administered by Housing and Urban Development. There is also state support for land banking in the form of legislation that allows a land bank to finance operations by borrowing, selling bonds and collecting specific taxes.

While land banking has been adopted as a brownfields land management strategy in the U.S., the groundwork of enabling legislation and liability protection for landowners and lenders was established as a precursor to land banking.

4.3 ONTARIO MODELS

Ontario cities, unlike U.S. cities, have not suffered greatly from general decline or suburban flight. Residential living in the city centres remains in high demand and residential redevelopment has taken place on many former industrial properties. At the
same time, Ontarians value outdoor living and maintain strong restrictions on greenfield development.

These factors have led to high demand and market value for urban Brownfield properties. Challenging Brownfield properties may not be typical where high property values prompt private sector funding, negating the need for government incentives. Given the foregoing, outside of tax incentives, the Ontario government does not provide incentives for Brownfield redevelopment. The Federal government does not provide any funds or financial incentives for Brownfield redevelopment. At the municipal level, there is significant activity to promote Brownfield redevelopment through urban planning, land use regulation and economic development functions.

Liability concerns continue to negatively impact the private sector’s willingness to acquire Brownfield properties. Canadian law does not provide liability protection to innocent landowners, such as subsequent purchasers, and lenders can face liability if they foreclose on contaminated sites. Ontario affords limited liability protection to lenders who foreclose on properties, allowing them to hold property for up to five years without liability action. Ontario municipalities that seize tax delinquent properties are also allowed the five years without liability action. This does not apply to a municipality acquiring property outside of the tax sale process.

4.3.1 CITY OF TORONTO

Land banking policies were adopted by the City of Toronto in 1973 and the St. Lawrence site in the downtown area was chosen for the City’s first land banking project. These lands were developed for housing with the co-operation of the federal, provincial, and municipal governments.

The project was feasible because the City had access to federal and provincial government subsidies and loans to finance the development of St. Lawrence. As the public sector developer, the City was given a 25-year mortgage by the federal government to finance the acquisition, and assemble the land, as well as federal grants. The provincial government provided interest-free loans and the building of St. Lawrence became self-financing as land was sold and leased to the private sector.

Federal and provincial funding together with high market value of the lands due to demand for housing, ensured the success of this project.
More recently, the Toronto Economic Development Corporation (TEDCO) has acquired ownership of 420 acres along the Toronto waterfront, where it has completed eight redevelopment projects comprising 60 acres of formerly contaminated land. Here again, however, the high market value of the lands far outweighed the remedial costs and ensure profitability of development in this area.

4.3.2 CITY OF OSHAWA

The City of Oshawa recently was presented with a Brownie Award for downtown redevelopment efforts. These efforts involved the acquisition of key Brownfield properties in the urban core for remediation to facilitate the construction of General Motors Centre. This project was initiated at the municipal level through the acquisition of Brownfields by the City of Oshawa. It is significant to note however, that this Land Banking effort by the City of Oshawa was completed in contemplation of redevelopment as General Motors Centre. The City of Oshawa is not otherwise acquiring Brownfield properties for assembly to manage redevelopment.

4.3.3 CITY OF KINGSTON

Through discussions with the City of Kingston Director of Community and Family Services, CRA understands that the City of Kingston looked at Land Banking as a tool to promote development of affordable housing. The City of Kingston found that they had a significant inventory of surplus land and that acquisition and assembly of additional lands for affordable housing redevelopment was not necessary.

Rather, the City of Kingston identified the need for management of these assets under directory of surplus land. This is administered by the City’s Growth of Sustainability Department which has established a “housing first” policy for municipal surplus lands. Brownfields are a longer term issue that the City of Kingston does not intend to address through Land Banking. They will consider acquiring a Brownfield properties on a site by site basis through failed tax sales or as a gift to promote the redevelopment of a broader area.

4.3.4 CITY OF BRANTFORD

The City of Brantford will use $12 million in federal funds to clean up its most critical brownfield site, Greenwich-Mohawk, which is located in the urban core and comprises
three pieces of land totalling more than 50 acres. Federal funding, along with the contributions from the Government of Ontario, will help the City of Brantford overcome the financial challenges of early-stage remediation.

This project exemplifies the need for funding from provincial and federal governments to facilitate remediation of Brownfield properties. The funding provided for this project is a one-time commitment by the federal and provincial governments and does not represent funding opportunities equally available to the City of Hamilton.

4.3.5 RELEVANCE OF THE ONTARIO APPROACH

The approach taken by other municipalities in Ontario is directly relevant to the City of Hamilton. The reluctance of other Ontario municipalities to undertake Land Banking in the absence of upper-tier government funding should be respected. Even those Ontario municipalities that have acquired and assembled properties for comprehensive redevelopment have only done so to facilitate a specific redevelopment project. Land Banking has not been adopted as a Brownfields land management strategy in Ontario.

4.4 COMPARATIVE REVIEW OF ADVANTAGES AND DISADVANTAGES

Taken together, the Ontario approach to Brownfields, when compared to that of the United States and Europe, could be summarized as placing greater remediation decision making with the individual municipalities and relying more extensively on the private sector without reliance upon provincial or federal funding and enabling legislation. In pursuing a Land Bank with the ability to acquire and assemble properties, the City of Hamilton will be doing so without reliance upon provincial or federal funding and enabling legislation that would protect it from environmental liability.

The Planning Act allows the municipality to acquire, hold, clear, grade or otherwise prepare land and to sell, or otherwise dispose of any land acquired or held by it in conformity with an approved community improvement plan. While this legislation would enable the municipality to acquire and assemble Brownfield properties, there is no legislation protecting the municipality from environmental liability associated with environmental impairment present on the acquired Brownfield properties. This is in stark contrast to environmental protections afforded through state legislation in the United States.
The ERASE Municipal Acquisition and Partnership Program (MAPP) allows the City to use funds accrued in the Brownfields Pilot Project Account to:

- cleanup and redevelop municipally owned Brownfield properties;
- acquire, remediate, rehabilitate and redevelop key privately owned Brownfield sites; and
- fund Brownfield pilot projects (public-private partnerships) to acquire, remediate, rehabilitate and redevelop privately and publicly owned Brownfields.

In addition, funding is available through FCM’s GMF for up to 80 percent of Brownfield redevelopment projects. Outside of the FCM, there are no federal funds allocated for Brownfields and there are no provincial Brownfield fund allocations. This is in stark contrast to the funding available through the federal governments in the United States.
5.0 **RECOMMENDED MODEL FOR ADOPTION BY THE CITY OF HAMILTON**

Due to potentially significant liabilities associated with owning environmentally impaired properties, limited protection from these liabilities for innocent landowners, and lack of meaningful provincial and federal funding for Brownfields in Ontario, Brownfield Land Banking by the City of Hamilton is not recommended as a land management tool.

CRA has reviewed alternatives to Land Banking in an effort to develop a business case that would achieve similar objectives if adopted by the City of Hamilton. In the absence of upper-tier funding and protection from environmental liability, it is recommended that the City of Hamilton pursue the following model as an alternative to Brownfield Land Banking:

i) Utilize funds available through the Brownfield Pilot Project (BPP) Account, as has been done to date, to identify strategic properties for Brownfield redevelopment;

ii) Utilize funds available through the BPP Account to reach out to environmental professionals and contractors to encourage a strategic partnership role in remediation of Brownfield sites; and

iii) Maintain the City of Hamilton’s success as a leader in Ontario through continued targeting of owners of strategic brownfield properties, making them aware strategic partnerships and funding opportunities.

5.1 **IDENTIFICATION OF STRATEGIC PROPERTIES**

General characteristics of Brownfield properties should be identified at the parcel level. Once they are identified, a portfolio of property profiles can be designed and organized into categories or groups having similar characteristics. Through this method, portfolios of properties can be identified as strategic development opportunities rather than individual properties. This will facilitate redevelopment on a broader front than an approach focusing on individual parcels.

The following characteristics of Brownfield properties should be identified in order to assign them to an appropriate portfolio:

- Location/street address;
- Acreage;
- Zoning;
- Square footage of on-site structures;
- Supporting infrastructure (water, sewer, gas, hydro);
- Highway/arterial road access;
- Market value;
- Appraised value (including appraisal date and obsolescence characteristics);
- Last known use;
- Real or perceived environmental impediments;
- Completed Phase I/Phase II ESAs; and
- Environmental site sensitivity (on or near surface water).

The above characteristics can be input into a geographic information system (GIS) database and used to categorize the properties into strategic development portfolios based on the following basic criteria:

i) Properties whose redevelopment will retain or create significant employment opportunities;
ii) Properties contiguous to existing industrial or commercial landowners;
iii) Properties with highway/arterial road access;
iv) Properties of at least 20 acres in size, but recognizing those three to five-acre sites that can be assembled into 20 acres of land or more;
v) Critical development areas as may be identified by city planning; and
vi) Properties near existing desirable industry leaders (e.g. steel making, biomedical, technology, etc.).

5.2 INCENTIVE PROGRAMS FOR STRATEGIC PARTNERSHIPS AND JOINT VENTURE OPPORTUNITIES

Once the Brownfields have been categorized and assigned to a portfolio, the City of Hamilton can establish its priorities for advancing development of particular portfolios of Brownfield properties based on its needs. This will allow the City of Hamilton to proactively approach those property owners with a vision and a business plan for a strategic partnership or joint venture and influence the development in a manner that is consistent with the City’s overall objectives.

The City of Hamilton’s ERASE program is a tool that the City can take to owners of targeted properties and encourage their participation in the program to meet the redevelopment objectives of the City. While the ERASE program achieves its objective as far as reimbursing the property owner for the costs of remediation of a Brownfield
site, the difficulty often encountered by developers of environmentally challenged properties is one of cash flow.

The ERASE program provides for some limited funding at the outset of a Brownfield redevelopment project but the bulk of the reimbursements do not become available until the property is fully redeveloped, occupied and generating property taxes. Financing through traditional lending institutions as a means of alleviating the cash flow issue is not available due to reticence of such institutions to finance projects with significant inherent environmental liabilities.

ERASE funding can be further leveraged with funding from upper-tier governments such as that available through the Green Municipal Funds (GMF) administered by the Federation of Canadian Municipalities (FCM). Under this program, the municipality can apply to FCM to obtain low interest loans and grants covering up to 80 percent of the remediation costs associated with a Brownfield property. The municipality can then pass through these funds either as a remediation grant to the Brownfield property owner.

In principle, the FCM funding mechanism is sound. In practice, however, FCM funding of Brownfield redevelopment projects has been ineffective in addressing cash flow issues faced by Brownfield developers. This is largely due to the fact that FCM funding is neither reliable nor consistent as each project is subject to a year long review by FCM and projects may be funded at 80%, 50% or not at all. Further, funds are not made available from FCM until after remediation is complete, the Record of Site Condition has been filed and building permits have been issued.

Although imperfect, the FCM funding model is a good initiative that, with some fine tuning, could address the cash flow issue associated with Brownfield rehabilitation. If a similar form of upper-tier government funding can be secured, it can be used to provide timely reimbursement to the Brownfield redeveloper for remediation costs that would not otherwise be recouped until the Brownfield is fully developed, occupied and generating taxes.

Such upper-tier government funding may be in the form of a low-interest loan to the City that the City can, in turn, direct to Brownfield rehabilitation grants. The cost to the City for such a grant program would be minimal since the developer’s ERASE entitlement would be reduced by an equivalent amount. Instead of paying the developer a portion of the tax increment once a site is developed, the City can use an equivalent portion of the tax increment to pay back the loan to the upper-tier government.
The cash flow issue can also be alleviated through the City of Hamilton’s facilitation of strategic partnerships. The City of Hamilton can identify sophisticated consultants and remediation contractors in the area that are willing to provide services to the project on a deferred payment basis in exchange for a share in the project profits. Under this model, the consultant and/or remediation contractor would receive payment for services as funding from the upper-tier government and the City of Hamilton’s ERASE program release funds. Assuming an 80 percent funding level from an upper-tier government, the remaining 20 percent of fees would be held as a “sweat-equity” stake in the project for which the consultant and/or contractor would be remunerated in accordance with an agreement between the property owner and the consultant/remediation contractor.

The success of these incentive programs hinges on the ability of the City of Hamilton to secure a consistent and reliable source of Brownfield rehabilitation loans from upper-tier governments. These loans would be paid back to the upper-tier municipality by the tax increment realized on the redeveloped Brownfield property that would have otherwise been paid to the Brownfield developer.

5.3 FINANCIAL MODEL

A financial model has been developed under two different industrial redevelopment scenarios. One scenario assumes a property size of 1 to 10 acres and the second scenario assumes a property size of 10 acres or more. These two scenarios were chosen based on distinctive market price differences. Based on information provided by DTZ Barnicke, commercial/industrial properties from 1 to 10 acres in size have an estimated market value of $150,000 per acre while industrial properties of 10 acres or more have an estimated market value of $225,000/acre. Under both scenarios, it is assumed that the City of Hamilton has secured a loan from an upper-tier government that it passes on as a Brownfield rehabilitation grant to the property owner as remediation progresses.

5.3.1 SMALL INDUSTRIAL PROPERTY MODEL

An example of the financial model for a small industrial property (1 to 10 acres) is as follows:

i) Through the process outlined in Section 5.1, the City of Hamilton targets an environmentally challenged 5-acre Brownfield within a group of smaller parcels of land having an aggregate size of 20 acres. The property has an assets-based
valuation (as clean) of $750,000 with an estimated remedial liability of $1,000,000. Being partially vacant with occupied portions utilized for warehousing, the property generates $25,000 per year for the owner net of property taxes and property management expenses, yielding a revenue-based valuation of $250,000 for the property. Remediation of the 5-acre parcel will take one and one-half years to complete and will serve as a catalyst to remediation and redevelopment of the entire 20-acre block of land, resulting in an improved tax base.

ii) The City of Hamilton approaches the owner of the 5-acre Brownfield parcel encouraging its redevelopment using funding available through the ERASE program and low interest loans secured from upper tier governments. The names of consultants and remediation contractors willing to provide services on a deferred payment basis are also provided to the landowner. The City of Hamilton stipulates that facilitation of funding from the upper-tier government is contingent upon the landowner remediating the site for redevelopment in a manner consistent with the City of Hamilton’s objectives.

iii) The landowner is eligible for environmental investigation grants through the ERASE Study Grant Program (SGP) and, with the co-operation of the City of Hamilton, receives funding for 80 percent of the remediation costs from upper-tier governments. The funding is provided to the City of Hamilton as a low-interest loan and the City of Hamilton provides the funds as a grant to the landowner, which is paid out upon filing of the Record of Site Condition to a maximum of $750,000 (the assessed market value of the property as clean). The remainder of the funds are released under the ERASE program once development is completed and the property is generating taxes.

iv) The landowner is responsible for paying 70% of consultant fees and remediation contractor fees as they are incurred. Upon filing of the Record of Site Condition, deferred consultant and contractor fees are paid. The consultant and remediation contractor’s proportionate share of profits are payable once development is completed and the property is generating taxes or upon sale of the property to a developer, whichever occurs first.

v) Interest payable to the upper-tier government for the loan is borne by the City of Hamilton.

Table 1 summarizes the financial costs for the landowner to bring the site to a shovel-ready state. Under this model, the landowner incurs soft costs of $25,000 per year in lost rental profit, the $3,000 cost of the Phase I ESA, and the $75,000 in shared
profits with the consultant and contractor. As the $25,000 per year is a soft cost and the profit sharing is not paid until the project is ready for development, cash flow issues typically associated with such a project are limited to a deficit of $685,000 accrued over the one and one-half year remediation period. Upon completion of site remediation, $750,000 in funding is released to the property owner who in turn pays the remaining $293,000 in deferred fees owed to the consultant and contractor.

Upon paying the consultant and remediation contractor in full, the property owner has approximately $225,000 invested in the property that is now worth $750,000. Upon development and occupation of the site, the property owner receives the remaining $225,000 in Brownfield rehabilitation grants over time from the City of Hamilton ERASE program. As these grants are collected by the property owner, the profit sharing bonus is paid to the consultant and the contractor as compensation for deferring payment on a portion of their services. In the end, the property owner has a $750,000 property for a hard cost investment of approximately $78,000.

5.3.2 LARGE INDUSTRIAL PROPERTY MODEL

An example of the financial model for a large industrial property (more than 10 acres) is as follows:

i) Through the process outlined in Section 5.1, the City of Hamilton targets an environmentally challenged 15-acre Brownfield within a group of smaller parcels of land having an aggregate size of 25 acres. The property has an assets-based valuation (as clean) of $3,375,000 with an estimated remedial liability of $4,000,000. Being partially vacant with occupied portions utilized for warehousing, the property generates $100,000 per year for the owner net of property taxes and property management expenses, yielding a revenue-based valuation of $1,000,000 for the property. Remediation of the 15-acre parcel will take three years to complete and will serve as a catalyst to remediation and redevelopment of the entire 25-acre block of land, resulting in an improved tax base.

ii) The City of Hamilton approaches the owner of the 15-acre Brownfield parcel encouraging its redevelopment using funding available through the ERASE program and low interest loans secured from upper tier governments. The names of consultants and remediation contractors willing to provide services on a deferred payment basis are also provided to the landowner. The City of Hamilton stipulates that facilitation of funding from the upper-tier government
is contingent upon the landowner remediating the site for redevelopment in a manner consistent with the City of Hamilton’s objectives.

iii) The landowner is eligible for environmental investigation grants through the ERASE Study Grant Program (SGP) and, with the co-operation of the City of Hamilton, receives funding for 80 percent of the remediation costs from upper-tier governments. The funding is provided to the City of Hamilton as a low-interest loan and the City of Hamilton provides the funds as a grant to the landowner, which is paid out as remediation progresses to a maximum of $3,375,000 (the assessed market value of the property as clean). The remainder of the funds are released under the ERASE program once development is completed and the property is generating taxes.

iv) The landowner is responsible for paying 70% of consultant fees and remediation contractor fees as they are incurred. Upon filing of the Record of Site Condition, deferred consultant and contractor fees are paid. The consultant and remediation contractor’s proportionate share of profits are payable once development is completed and the property is generating taxes or upon sale of the property to a developer, whichever occurs first.

v) Interest payable to the upper-tier government for the loan is borne by the City of Hamilton.

Table 2 summarizes the financial costs for the landowner to bring the site to a shovel-ready state. Under this model, the landowner incurs soft costs of $100,000 per year in lost rental profit, the $3,000 cost of the Phase I ESA, and the $505,000 in shared profits with the consultant and contractor. As the $100,000 per year is a soft cost and the profit sharing is not paid until the project is ready for development, cash flow issues typically associated with such are project are limited to a deficit of $2,848,000 accrued over the three year remediation period. Upon completion of site remediation, $3,604,000 in funding is released to the property owner who in turn pays the remaining $1,220,000 in deferred fees owed to the consultant and the contractor.

Upon paying the consultant and remediation contractor in full, the property owner has approximately $814,000 invested in the property that is now worth $3,375,000. Upon development and occupation of the site, the property owner receives the remaining $901,000 in Brownfield rehabilitation grants over time from the City of Hamilton ERASE program. As these grants are collected by the property owner, the profit sharing bonus is paid to the consultant and the contractor as compensation for deferring payment on a
portion of their services. In the end, the property owner has a $3,750,000 property for a hard cost investment of approximately $508,000.

This approach, which allows the City to influence Brownfield redevelopment without the cost and liability associated with acquiring such Brownfield properties, may be employed equally at:

- Brownfields assessed at market or near-market rates;
- Idle Brownfield properties;
- Transitional Brownfield properties; and
- Environmentally challenged Brownfield properties.

A variation on this model can be used to facilitate remediation of Brownfields subject to tax sale proceedings whereby the City of Hamilton participates in profits of the project at a rate proportional to waived taxes. A variation of this model, which excludes ERASE funding, is also applicable for Brownfield properties owned by the City of Hamilton.

5.4 TIMELINE FOR IMPLEMENTATION

Although the ERASE program and the BPP Account are well established, the recommended model cannot be implemented until such time as upper-tier funding in the form of low interest loans are available on a consistent and reliable basis. In the interim, funds from the BPP Account can be used to identify the strategic Brownfield properties and those environmental professionals and contractors willing to strike strategic partnerships. Funds from the BPP Account may also be used to pressure upper-tier governments for Brownfield funding in the form of low-interest loans. Thereafter, the City of Hamilton can proactively approach owners of strategic Brownfield properties with a financially appealing remediation plan consistent with community improvement objectives.

5.5 ADMINISTRATION AND COST FOR IMPLEMENTATION

As the Economic Development Department has administrative duties related to the ERASE community improvement plan, this is the logical administrative body for administering the utilization of BPP Account funds to identify strategic properties for Brownfield redevelopment and reach out to environmental professionals and contractors to forge strategic partnerships. The Economic Development Department is also the logical administrative body for targeting owners of strategic properties with a
development plan that includes ERASE and upper-tier government funding as well as strategic partnerships with environmental professionals and contractors.

Staffing levels and work loads at the Economic Development Department will dictate the need to hire additional staff to take on this administrative role. This would include assembling Brownfield portfolios, reaching out to environmental professionals and contractors, and proactively approaching owners of strategic Brownfield properties with a remediation plan.

The Economic Development Department will consult with other municipal departments (e.g. planning, legal, etc.) as necessary.

5.6 PERFORMANCE BENCHMARKS

The performance of this approach can be benchmarked by gauging the response from property owners approached by the City of Hamilton under this model. An interest level of one out of ten property owners when the program is initiated may be compared to the interest level after one project has been completed. Obviously, the subsequent interest will be tied to the success of the project from the landowner’s perspective.

This approach may also be benchmarked by tracking the rate of remediation of targeted properties against the rate of remediation of all Brownfield properties. A higher rate of remediation of targeted properties would indicate that efforts towards making strategic properties “shovel ready” for businesses to relocate are working under this model.

5.7 ADVANTAGES AND DISADVANTAGES

The advantages of the proposed model for the City of Hamilton are as follows:

i) Minimal funds are required for administration since municipal land acquisition is not required;

ii) There are no environmental liabilities associated with ownership of Brownfield lands;

iii) The ability to influence the remediation and redevelopment of Brownfields is strengthened by the City of Hamilton’s ability to obtain low-interest loans from upper-tier governments and pass them along to the property owner as Brownfield rehabilitation grants at its discretion; and
iv) Other than funding that is currently available through the ERASE program, the model runs at minimal cost to the City (interest on upper-tier government loans).

The main advantage of the proposed model for the landowner is that the landowner ends up with a remediated Brownfield with increased value with limited cash flow issues typically faced during remediation. Advantages also extend to environmental professionals and contractors willing to provide “sweat-equity” to the project. It represents an opportunity to provide services to the project and participate in the profits to the extent that payment for services is deferred.

The main disadvantage of this model is that there is presently no consistent or reliable source of funding from upper-tier governments. Recognizing that FCM has come closest to satisfying this need, further efforts focused towards cash flow assistance are required to spur the development of Brownfields if this model is to succeed. Large remediation projects where the remedial costs significantly outweigh the remediated market value represent a particular challenge. These challenging Brownfield projects will not be brought forward unless consistent and reliable funding is provided to alleviate projected cash flow issues.
6.0 CONCLUSIONS

In the UK and Europe as a whole, Brownfields are sought after for redevelopment due to high demand for housing. In the UK, this is promoted by upper-tier government imposed targets requiring that 60% of new housing be built on Brownfields. Municipalities and government organisations that have Brownfield landholdings are encouraged to sell them to allow government redevelopment targets to be met. As a rule, local governments do not form Land Banks.

In the United States, municipal governments form Brownfield Land Banks. The Land Banks are supported by enabling legislation, most notably of which is legislation protecting innocent landowners (municipalities) from environmental liability associated with Brownfields acquired and assembled in the Land Bank. Further, funding is available at the State level, which enables the municipalities to acquire Brownfields at market rates for assembly in the Land Bank.

In Ontario, there has been a reluctance for municipalities to undertake Land Banking due to a lack of upper-tier government funding. This reluctance is amplified by the absence of legislation providing protection to municipalities from environmental liabilities associated with ownership of Brownfields. Even those Ontario municipalities that have acquired and assembled properties for comprehensive redevelopment have only done so to facilitate a specific redevelopment project. Land Banking has not been adopted as a general Brownfields land management strategy in Ontario.

Due to potentially significant liabilities associated with owning environmentally impaired properties, limited protection from these liabilities for innocent landowners, and lack of meaningful provincial and federal funding for Brownfields in Ontario, Brownfield Land Banking by the City of Hamilton is not recommended as a land management tool.
7.0 **RECOMMENDATIONS**

In the absence of upper-tier funding and protection from environmental liability, it is recommended that the City of Hamilton pursue the following model as an alternative to Brownfield Land Banking:

i) Utilize funds available through the Brownfield Pilot Project (BPP) Account, as has been done to date, to identify strategic properties for Brownfield redevelopment;

ii) Utilize funds available through the BPP Account to reach out to environmental professionals and contractors to encourage a strategic partnership role in remediation of Brownfield sites; and

iii) Maintain the City of Hamilton’s success as a leader in Ontario through continued targeting of owners of strategic brownfield properties, making them aware strategic partnerships and funding opportunities.

The above model will allow the City of Hamilton to influence development of Brownfield properties without having to assume ownership of the properties and responsibility for their associated environmental liabilities.

It is noted however, a significant hurdle to development of Brownfield properties in Ontario today is one of cash flow. At the outset of a project, the Brownfield developer is expected to outlay significant funds for remediation with no expectation of return until the property is fully developed, occupied and generating taxes. Financing through traditional lending institutions as a means of alleviating the cash flow issue is not available due to reticence of such institutions to finance projects with significant inherent environmental liabilities.

Efforts focussed towards cash flow assistance are required to spur the development of Brownfields if this model is to succeed. Large remediation projects where the remedial costs significantly outweigh the remediated market value represent a particular challenge. These challenging Brownfield projects will not be brought forward unless consistent and reliable funding is provided to alleviate projected cash flow issues.

To date, funding from the Federation of Canadian Municipalities’ (FCM) Green Municipal Fund (GMF) has come closest to satisfying this need. The FCM funding falls short, however, in that the funds are neither reliable nor consistent as each project is subject to a year long review by FCM and projects may be funded at 80%, 50% or not at all. Further, funds are not made available from FCM until after remediation is complete, the Record of Site Condition has been filed and building permits have been issued.
While the ERASE program provides incentive for Brownfield redevelopment, it cannot alleviate significant cash flow constraints imposed on Brownfield developers without a supplementary source of funding. If upper-tier government funding can be secured, it can be used to provide timely reimbursement to the Brownfield redeveloper for remediation costs that would not otherwise be recouped until the Brownfield is fully developed, occupied and generating taxes.

Such upper-tier government funding may be in the form of a low-interest loan to the City that the City can, in turn, direct to Brownfield rehabilitation grants. The cost to the City for such a grant program would be minimal since the developer’s ERASE entitlement would be reduced by an equivalent amount. Instead of paying the developer a portion of the tax increment once a site is developed, the City can use an equivalent portion of the tax increment to pay back the loan to the upper-tier government.

Based on the foregoing, the City of Hamilton should direct its efforts to obtain Brownfield rehabilitation loans from upper-tier governments. The financial model associated with this approach would result in minimal cost to the City of Hamilton to achieve objectives similar to those that might be achieved through Land Banking. At the same time, cash flow issues that typically prevent landowners from undertaking Brownfield remediation projects are minimized.
8.0 REFERENCES


All of Which is Respectfully Submitted,
CONESTOGA-ROVERS & ASSOCIATES

Jane Perz, P. Eng.

Marc Gaudet, P. Eng.
## TABLE 1

**FINANCIAL MODEL**

**REMEDIATION COSTS**

**ALTERNATIVE APPROACH TO LAND BANKING - SMALL INDUSTRIAL PROPERTY**

<table>
<thead>
<tr>
<th></th>
<th>SGP Cost</th>
<th>SGP Eligibility (As Incurred)</th>
<th>80% Grant Eligibility (As Incurred)</th>
<th>RGP Eligibility (Deferred)</th>
<th>Net Landowner Cost</th>
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<tr>
<td><strong>I. ENVIRONMENTAL CONSULTING</strong></td>
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<td>A. Phase I Environmental Site Assessment</td>
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<td>A. Mobilization/Demobilization</td>
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**TABLE 2**

**FINANCIAL MODEL**

**REMEDIATION COSTS**

**ALTERNATIVE APPROACH TO LAND BANKING - LARGE INDUSTRIAL PROPERTY**

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<tr>
<th></th>
<th>SGP Eligibility (As Incurred)</th>
<th>80% Grant Eligibility (As Incurred)</th>
<th>RGP Eligibility (Deferred)</th>
<th>Net Landowner Cost</th>
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<td><strong>I. ENVIRONMENTAL CONSULTING</strong></td>
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<tr>
<td>A. Phase I Environmental Site Assessment</td>
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<td>$3,000</td>
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<tr>
<td>B. Phase II Environmental Site Assessment</td>
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<td>E. Profit Share</td>
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<td><strong>II. REMEDIATION CONTRACTOR</strong></td>
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<tr>
<td>A. Mobilization/Demobilization</td>
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<td>$-</td>
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<tr>
<td>B. Asbestos Abatement</td>
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<td>$80,000</td>
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<tr>
<td>C. Building Demolition</td>
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