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Brownfield Opportunity Areas Frequently Asked Questions (Draft)

Site Assessments

1. What is a BOA site assessment and how should it be utilized in conjunction with the BOA program?

A BOA site assessment is comparable to a Phase II Environmental Site Assessment (ESA). BOA site assessments should be conducted in accordance with ASTM E1903-97 (2002), the industry standard for Phase II site assessments. Additional information on the ASTM standard for Phase II ESAs can be found at <http://www.astm.org/> (search for "Phase II Active Standard").

As with a Phase II ESA, the primary objective of conducting a BOA site assessment is to provide sufficient information regarding contamination to assist in making an informed business decision about the property. In order to be eligible for a site assessment, the State must determine that additional environmental information regarding contamination for the property is necessary to determine a technically and economically viable land use for the BOA.

While ASTM E1903-97 (2002) provides flexibility in determining the level of assessment for each site, Phase II ESAs are typically not sufficient for remedy

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Environmental Remediation
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selection. However, a Phase II level of assessment is sufficient for land use planning purposes, and allows assessment to be completed more quickly. The level of assessment required may depend on the proposed land use; for example, a site proposed for residential use may require more work than a site proposed for industrial use.

2. What factors should be considered when selecting property for a site assessment? How is the site defined and can it include multiple tax parcels?

First of all, the site must be a strategic brownfield site in the context of the BOA program as determined by the grantee in consultation with the State. Secondly, the State must concur that additional environmental information regarding contamination for the site is necessary to determine a technically and economically viable land use for the BOA. If multiple site assessments are requested, the applicant should provide a prioritized list of sites.

In identifying a property or properties within a BOA for a site assessment, the "site" should have definite and identifiable boundaries. A property can be defined for the purposes of a site assessment around one or more area(s) of concern and may include one or more tax parcels. Please note that if multiple tax parcels are included in the site, the site assessment report will relate to the site and not each tax parcel (although the report may be structured to summarize results by tax parcel if appropriate). The budget requested should be for the site and not broken down by tax parcel.

3. What factors should be used to identify a site as a strategic brownfield site?

Factors that grantees may use to identify strategic sites may include but are not limited to:

- overall importance to the community and the revitalization effort;

- location;
- ownership and willingness of owner to allow access;
- property size and capacity for redevelopment;
- potential to spur additional economic development or positive change in the community;
- potential to improve quality of life or include new public amenities;
- community support for proposed projects for the site; and
- adequacy of supporting or nearby infrastructure, utilities and transportation system.

For a strategic site to be eligible for site assessment funds, it must meet the following additional criteria:

- be any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant;
- additional environmental information must be necessary to determine a technically and economically viable land use for the BOA;
- must be owned by a volunteer (as defined at 6NYCCR 375-3.2) or a municipality (as defined at 6NYCCR 375-4.2);
- cannot be a Class 1 or 2 site on the Registry of Inactive Hazardous Waste Disposal Sites in New York;
- cannot be on the Federal National Priority List;
- cannot be a permitted Resource Conservation and Recovery Act site (note: interim status sites are eligible);
- cannot be subject to an order for cleanup under Article 12 of the Navigation Law or Article 17 Title 10 of the Environmental Conservation Law;
- cannot be subject to an enforcement action under another State or Federal remedial program.

4. Does the applicant have to document that it is either the owner of the property or has a written access agreement with the owner(s) of the property to perform a site assessment?

The applicant must include with its Step 3 application proof of ownership (deed) or certification that the site owner will allow access. A certification form is available from the State.

5. What activities/tasks are eligible under a BOA site assessment?

Eligible activities are those tasks normally performed under a Phase II ESA (see question #1). Please note that the assessment of indoor contamination (e.g. asbestos containing materials), while not addressed by ASTM E1903-97 (2002), is often performed as part of a Phase II ESA and may be eligible for a BOA site assessment if this information is necessary to determine a technically and economically viable land use for the BOA.

6. Can site assessment funding be used to evaluate environmental information to determine a technically and economically viable land use?

While this activity is eligible for BOA funding, it would not be reimbursed with site assessment funds. Funding for this activity should be included in the budget for the development of the BOA plan.

7. If a grant is awarded that includes funds for site assessments, can a site be replaced after the award?

The decision would be made on a case by case basis. Factors to be considered would be the reason for replacing the site, what work was performed, how much money was spent on the site that is being replaced and whether sufficient time and money exists to start another site. In addition, the proposed site would have to be reviewed and approved following the same process used during

the grant application process.

8. Can one contractor be procured to perform multiple site assessments?

Yes, one contractor can be procured to perform multiple site assessments. A site assessment report (Phase II report) would be required for each site.

9. What information is required to apply for a site assessment?

Funding for a site assessments must be requested as part of a Step 3 grant application. The applicant must complete a Step 3 Application Site Assessment Supplement for each site assessment and include it with its Step 3 application.

The goal of a Phase II ESA as defined in ASTM E1903-97 (2002) is to evaluate recognized environmental conditions identified in a Phase I ESA or transaction screen process (industry standards ASTM E1527-05 and ASTM E1528-06, respectively). Activities required to develop reports comparable to a Phase I ESA or transaction screen are eligible under Step 2 of the BOA process, once a property has been identified as a potential strategic site.

10. Is there a limit to the number of site assessments that will be approved under one BOA? Is there a dollar amount limit for each site assessment or the total dollar value of site assessments that will be approved under one BOA?

There are no strict limitations however, the average cost for a Phase II typically ranges from \$75,000 - \$150,000 depending on the size, location and complexity of the previous site uses. The number of site assessments and the total amount approved for site assessments under one BOA would depend upon the size of the BOA and the justification for the site assessments. The availability of funding will also play a factor. Given the current level of funding

for the BOA program, the state will limit the number of site assessments under one BOA to three (3), unless extenuating circumstances critical to determining the land-use of the area exist.

11. What state agency will oversee the performance of the site assessment? Can the grantee delegate its grantee responsibility for the performance of the site assessment?

The New York State Department of Environmental Conservation (DEC) will oversee the performance of site assessments. The grantee can not delegate any of its grantee responsibility regarding site assessments. The grantee can procure a contractor to perform the site assessment; however, the grantee would be responsible for making sure the work was done appropriately, in accordance with the grant requirements, within budget and that it resulted in acceptable work products.

12. Does the BOA program provide any liability releases in regards to performing site assessments?

No; there are no liability releases provided under the BOA program.

13. What happens if during the course of the BOA planning process an environmental situation is uncovered that may require immediate action?

DEC should be notified of any environmental situations that may require immediate action in the time frames set forth in Environmental Conservation Law. DEC's response will depend on the situation.

If the site assessment findings give DEC reason to believe the site may be a significant threat to public health and the environment, DEC would be obligated to follow up on this information. If the site is determined a significant threat, appropriate parties would be given the opportunity to address the site under one of the State's brownfield

programs (Brownfield Cleanup Program (BCP), Environmental Restoration Program) before the State would consider listing the site on the Superfund Registry and addressing the site under the Superfund Program. If the contamination includes petroleum, the site would be referred to DEC's Spill Response program.

Please note that all petroleum, chemical storage, and out-of-service tanks discovered as part of the BOA site assessment must be registered and/or closed in accordance with existing regulations. Furthermore, any containment vessels discovered containing any contaminant must be removed and disposed of in accordance with all applicable State and federal requirements.

14. Are there different eligibility criteria under the BCP for sites within a BOA?

No, the eligibility criteria under the BCP is the same for all proposed sites whether within a BOA or not.