

NOTE

UTILIZING MICHIGAN BROWNFIELD
POLICIES TO INCENTIVIZE
COMMUNITY-BASED URBAN
AGRICULTURE IN DETROIT

*Nicholas Leonard**

As residents have increasingly moved from urban centers to suburbs, several cities have not been able to create effective solutions to the problems that such population loss has presented. Abandoned properties have proven to be the primary problem, and nowhere is that problem more pronounced than in Detroit. Urban agriculture has been widely embraced on a grassroots level as a potential solution to the pervasive problems that abandoned properties present and that cities have been unable to solve. While urban agriculture networks have largely arisen outside of municipal control, several cities are beginning to recognize urban agriculture as a potential tool for urban revitalization. However, there is a basic problem: many cities in which urban farming has flourished are riddled with brownfields. It is possible for cities and the urban agriculture community to turn this obstacle into an opportunity if they work together. By utilizing the Michigan Brownfield Redevelopment Financing Act to incentivize urban farming, Detroit could not only promote urban agriculture as a cost-effective tool for the revitalization of some of Detroit's most distressed neighborhoods, but could also ensure that the farmers and the food they produce are safe from toxic contamination. By encouraging urban farms, Detroit will for the first time have a truly viable strategy to reversing blight and revitalizing some of the city's most depressed areas.

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INTRODUCTION

While urban agriculture¹ has a long history in many American cities, including Detroit, its modern incarnation is different in one important respect. In the past, urban agriculture was largely seen as a temporary measure for a temporary calamity, while today it is seen as a permanent piece of the local social fabric. When Americans were asked to grow “victory gardens” during World War II, they were asked to fulfill their patriotic duty and assist the war effort.² While the benefits of victory gardens extended beyond the war effort,³ the gardens were not seen as a permanent and transformative practice on the home front.

As the landscapes of American cities have changed in the second half of the twentieth century, so too has the role of urban agriculture. Today, urban farming has as much to do with building community as it does with grow-

1. Throughout this Note, I utilize the terms “urban agriculture” and “urban farms” to refer to food-producing farms. While others use the term “urban garden,” it is not always clear whether that term refers to farms focused on food production in urban settings or to general green spaces.

2. In World War II, victory gardens were largely seen as a way to increase the food supply for American forces abroad and to reduce the burden of increased food prices domestically. See JEAN MARIE PUTNAM & LLOYD C. COSPER, GARDENS FOR VICTORY 5 (2d ed. 1942).

3. See *id.* (noting that victory gardens could provide health benefits for those that participated).

ing food.⁴ Urban farms have come to be recognized for revitalizing city neighborhoods that suffer from blight, abandonment, and disinvestment.⁵ While urban farms have traditionally been organized and managed by non-profit organizations, churches, and community groups rather than municipal governments,⁶ cities like Detroit are beginning to take note of the revitalizing power that urban agriculture provides for city neighborhoods. Seeking to harness that power, Detroit and several other cities are recognizing urban agriculture as a valid land use by passing urban agriculture zoning ordinances.⁷ Further, some cities outside Detroit have started pilot programs to fully explore the benefits that urban agriculture can bring to communities and cities.⁸

As urban farming has expanded as a tool for revitalizing vacant land, however, concerns have been raised about the possible threat of soil contamination and associated threats to food and farmer safety.⁹ The Government Accountability Office (GAO) estimates that there are roughly “450,000 to one million brownfields”¹⁰ throughout the United States.¹¹

4. For an in-depth look into the community building capabilities of urban agriculture, see Jac Smit & Martin Bailkey, *Urban Agriculture and the Building of Communities, in CITIES FARMING FOR THE FUTURE—URBAN AGRICULTURE FOR GREEN PRODUCTIVE CITIES* (2006), available at <http://www.ruaf.org/node/971>; see also Sheila Foster, *The City as an Ecological Space: Social Capital and Urban Land Use*, 82 NOTRE DAME L. REV. 527 (2006).

5. For an in-depth look into the benefits urban agriculture may provide Detroit, see John E. Mogk et al., *Promoting Urban Agriculture as an Alternative Land Use for Vacant Properties in the City of Detroit: Benefits, Problems and Proposals for a Regulatory Framework for Successful Land Use Integration*, 56 WAYNE L. REV. 1521 (2010).

6. See DETROIT FOOD POLICY COUNCIL, DETROIT FOOD SYSTEM REPORT 2011–2012 (2013) [hereinafter FOOD SYSTEM REPORT], available at <http://detroitfoodpolicy.council.net/sites/default/files/pdfs/2011%202012%20Annual%20Food%20Report.pdf> (detailing how the current urban farming network in Detroit was largely organized by a collaborative consisting of non-profits, faith-based organizations, community groups, and universities); MINDY GOLDSTEIN ET AL., URBAN AGRICULTURE: A SIXTEEN CITY SURVEY OF URBAN AGRICULTURE ACROSS THE COUNTRY (2011), available at <http://Georgiaorganics.org/wp-content/themes/GeorgiaOrganics/Downloads/SiteMoveOver/urbanagreport.pdf> (detailing how in several cities such as Atlanta, Boston, Chicago, Cleveland, Denver, Detroit, Milwaukee, Minneapolis, Nashville, Philadelphia, San Francisco, and Washington D.C., urban agriculture is driven in large part by community and non-profit organizations).

7. See DETROIT, MICH., MUN. CODE §§ 61-3-113 to 61-15-24 (2013); GOLDSTEIN ET AL., *supra* note 6.

8. See, e.g., ALLISON HAGEY ET AL., POLICYLINK, GROWING URBAN AGRICULTURE: EQUITABLE STRATEGIES AND POLICIES FOR IMPROVING ACCESS TO HEALTHY FOOD AND REVITALIZING COMMUNITIES 29 (2012), available at http://www.policylink.org/atf/cf/%7B97C6D565-BB43-406D-A6D5-ECA3BBF35AF0%7D/URBAN%20AG_FULLREPORT_WEB1.PDF (detailing a Cleveland project to “implement agricultural pilot projects” and bring the most successful ones “up to scale”).

9. See Steven A. Platt, Note, *Death by Arugula: How Soil Contamination Stunts Urban Agriculture, and What the Law Should Do About It*, 97 MINN. L. REV. 1507 (2013).

10. As defined by the Comprehensive Environmental Response, Compensation, and Liability Act, a “brownfield site” is a “real property, the expansion, redevelopment or reuse

Brownfields are difficult to identify due to the fact that many properties have been long abandoned and there are often no physical indicators of potential hazardous toxic contamination.¹² While urban farming networks have worked to address this problem, gaps in practice regarding soil testing on urban farms remain,¹³ and the level of contamination on existing and prospective urban farms is unclear.¹⁴

For Detroit to realize the full potential of urban agriculture as a community revitalization strategy, two obstacles must be overcome. First, to the greatest extent practicable, concerns about possible soil contamination, which create possible problems of food and farmer safety, must be fully addressed. Second, the urban agriculture community will need a source of funding to defray the costs associated with the construction of urban farms, including the costs of testing for and remediating any existing contamination.

This Note will argue that these obstacles can be largely overcome by utilizing the legal framework developed by the state of Michigan to address the issues of brownfields. This framework could provide a source of funding to help urban farmers clean up contaminated lands and build farms on vacant or blighted property, whether they are contaminated or not.¹⁵ However, to maximize the economic and social utility of brownfield laws as they pertain to urban farming in Detroit, they must be adapted to promote standardization of food and farmer safety requirements and to ease access to brownfield funding opportunities.

Part I will provide a brief background on the problem of abandoned, vacant, and contaminated land, and the role urban agriculture has played in

of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” 42 U.S.C. § 9601(39)(A) (2012). It should be noted that this definition is broader under Michigan’s brownfields laws, which include financing incentives for redevelopment of certain types of non-contaminated properties. *See* MICH. COMP. LAWS ANN. § 125.2652(e) (West 2013); § 125.2652(n)(v); discussion *infra* Part II.

11. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-05-450T, BROWNFIELD REDEVELOPMENT: STAKEHOLDERS CITE ADDITIONAL MEASURES THAT COULD COMPLEMENT EPA’S EFFORTS TO CLEAN UP AND REDEVELOP PROPERTIES (2005).

12. *See* Joel B. Eisen, “Brownfields of Dreams”?: Challenges and Limits of Voluntary Cleanup Programs and Incentivizes, 1996 U. ILL. L. REV. 883, 893 (noting that “[t]he number of brownfield sites, and the magnitude of contamination at them, is not known” (footnotes omitted)).

13. *See* U.S. ENVTL. PROT. AGENCY, BROWNFIELDS AND URBAN AGRICULTURE: INTERIM GUIDELINES FOR SAFE GARDENING PRACTICES 2 (2011) [hereinafter EPA INTERIM GUIDELINES] (noting that some community farm organizations test for agronomic parameters while a small subset of community farm organizations test for lead contamination).

14. *Id.*

15. *See* Brownfield Redevelopment Financing Act, MICH. COMP. LAWS ANN. §§ 125.2651-72 (West 2013).

revitalizing such land in Detroit. It will then examine the obstacles inherent in farming on vacant and potentially contaminated land in Detroit, namely health risks and funding issues. Part II will examine how Michigan's brownfield laws are currently formulated, how they apply to urban farms both substantively and procedurally, how they can be used to promote sustainable financing and food and farmer safety, and the important role the legal community must play in helping urban farmers secure financing through Michigan's Brownfield Redevelopment Financing Act. Finally, in Part III this Note will recommend amendments to Michigan's brownfield laws that can further promote the use of urban farming as a community-based revitalization tool.

I. THE RISE OF URBAN AGRICULTURE: ABANDONED PROPERTIES AND DISINVESTMENT IN AMERICAN CITIES

A. The Abandonment of American Cities

For decades, Detroit has been struggling with the basic problem of how to redevelop the growing number of abandoned, vacant properties and revitalize neighborhoods that have been ravaged by blight. In the latter part of the twentieth century, more and more Americans began living in suburban communities rather than central cities.¹⁶ As a result, many of America's once prominent urban centers have been left largely deserted.¹⁷

16. FRANK HOBBS & NICOLE STOOPS, U.S. CENSUS BUREAU, DEMOGRAPHIC TRENDS IN THE 20TH CENTURY: CENSUS 2000 SPECIAL REPORTS 33 (2002) (“[I]n 1910, 21 percent of the total U.S. population lived in central cities, while only 7 percent of the population lived in suburbs By 2000, half of the entire U.S. population lived in the suburbs of metropolitan areas.”); *see also* JOE T. DARDEN ET AL., DETROIT: RACE AND UNEVEN DEVELOPMENT 19 (1987) (stating that between 1960–1980 “Detroit lost nearly half a million people, while surrounding suburban counties gained over a million new residents”).

17. This problem has been particularly relevant for Detroit. Since its peak population of 1,849,568 citizens in 1950, Detroit's population steadily declined to 951,270 by 2000. *See* SE. MICH. COUNCIL OF GOV'TS, HISTORICAL POPULATION AND EMPLOYMENT BY MINOR CIVIL DIVISION, SOUTHEAST MICHIGAN 7 (2002). Particularly alarming for Detroit has been its continued population decline in the twenty-first century. Katharine Q. Seelye, *Detroit Census Figures Confirm a Grim Desertion Like No Other*, N.Y. TIMES, Mar. 23, 2011, at A1, available at http://www.nytimes.com/2011/03/23/us/23detroit.html?_r=0 (stating that Detroit's 25% decline in population from 2000 to 2010 represented the “largest percentage drop in history for any American city with more than 100,000 residents” with the exception of New Orleans after Hurricane Katrina in 2005). Other cities that have undergone heavy losses in population include St. Louis (62.7% population decline from its peak population of 856,796 in 1950 to its 2010 population of 319,294), Cleveland (56.6% decline from peak population of 914,808 in 1950 to 396,815 in 2010), Pittsburgh (54.8% decline from peak population of 676,806 in 1950 to 305,704 in 2010), and Buffalo (55.0% decline from peak population of 580,132 in 1950 to 261,310 in 2010). *Compare* Campbell Gibson, *Population of*

As residents have left cities, they have often abandoned their property, creating a multitude of significant problems both for residents and city governments. For city governments, the vacant land is a missing source of tax revenue, which weakens a city's ability to provide basic services to its residents.¹⁸ For residents, these properties are catalysts for higher crime rates¹⁹ and lower property values,²⁰ and often deter development due to "deteriorated infrastructure, patterns of disinvestment and abandonment, and a lack of supporting facilities and services like grocery stores and convenience retail outlets."²¹

City governments have historically struggled to address the pervasive and deleterious effects of abandoned properties on cities and their residents.²² As abandoned properties have persisted, cities have explored various revitalization strategies.²³ Detroit in particular has attempted to reduce the impact of blight by demolishing abandoned structures through a

the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990 tbl.23 (U.S. Census Bureau, Population Div. Working Paper No. 27, 1998), available at <http://www.census.gov/population/www/documentation/twps0027/twps0027.html#refer>, with *State & County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/index.html> (last visited Feb. 22, 2014) (search desired state, then search desired city).

18. Chris Christoff, *Half of Detroit's Streetlights May Go Out as City Shrinks*, BLOOMBERG (May 24, 2012, 12:06 PM), <http://www.bloomberg.com/news/2012-05-24/half-of-detroit-s-streetlights-may-go-out-as-city-shrinks.html>; see also Chastity Pratt Dawsey, *Judge to Sort Out Detroit Public Schools Dispute Between Emergency Financial Manager, School Board*, DETROIT FREE PRESS, Jan. 16, 2013, at A1, available at <http://www.freep.com/article/20130116/NEWS01/301160129/Judge-to-sort-out-Detroit-Public-Schools-dispute-between-emergency-financial-manager-school-board>.

19. David T. Kraut, Note, *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. L. REV. 1139, 1147 (1999) (citing two studies finding that "city blocks blighted by unsecured vacant buildings had crime rates that were twice as high as those found in 'control blocks' without vacant structures").

20. *Id.* at 1149–50.

21. J. Terrence Farris, *The Barriers to Using Urban Infill Development to Achieve Smart Growth*, 12 HOUSING POL'Y DEBATE 1, 7 (2001).

22. Reasons for why cities have struggled to address the problems presented by abandoned properties vary. In his seminal book on Detroit, Thomas Sugrue argued that "elected officials in Lansing and Washington, beholden to a vocal, well-organized, and defensive white suburban constituency, have reduced funding for urban education, anti-poverty, and development programs." THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* 268 (1st Princeton classic ed. 2005). This argument has at least some credence. See Michael Cooper, *Cities Face Tough Choices as U.S. Slashes Block Grants Program*, N.Y. TIMES (Dec. 21, 2011), http://www.nytimes.com/2011/12/22/us/cities-struggle-as-us-slashes-block-grants-program.html?_r=0 (noting that cuts in the Community Development Block Grant has greatly limited one of the traditional resources cities have relied on to combat blight).

23. John Hurdle, *Philadelphia Raises Stakes with Plan to Reverse Blight*, N.Y. TIMES (Sept. 22, 2013), <http://www.nytimes.com/2013/09/23/us/philadelphia-hopes-a-land-bank-will-combat-urban-blight.html> (noting the efforts of the city of Philadelphia to encourage the redevelopment of its 40,000 abandoned properties).

combination of federal assistance²⁴ and private support of non-profit efforts.²⁵ However, the enormity of the problem presented by abandoned properties remains daunting in Detroit. Emergency Manager Kevyn Orr's financial and operational report recently estimated that the city has "at least 60,000 parcels of vacant land (constituting approximately 15% of all parcels in the city) and approximately 78,000 vacant structures, of which 38,000 are estimated to be in potentially dangerous condition."²⁶ Further, while there has been a large push to demolish abandoned structures, the discussion regarding how that land will be repurposed has been lacking.

With many municipal governments unable to fully rectify the problem of abandoned properties, inner city residents have taken matters into their own hands. In Detroit, community-based groups have endeavored to do everything from tearing down abandoned and decrepit homes to mowing the grass at abandoned playgrounds and parks that the city can no longer afford to maintain.²⁷

24. Matthew Dolan, *Detroit Renews Effort to Raze Blighted Buildings*, WALL ST. J. ONLINE (Sept. 4, 2013, 7:29 PM), <http://online.wsj.com/news/articles/SB10001424127887323893004579055460876102266> (detailing the efforts of the Bing administration, which has "already demolished more than 8,000 structures since 2009," as well as the recent allocation of \$6.5 million in emergency funding from the U.S. Department of Housing and Urban Development to raze the abandoned Frederick Douglass Homes complex); Matt Helms & Todd Spangler, *\$300M Federal, Private Boost for Detroit: 'We are Going to Do Everything We are Capable Of'*, DETROIT FREE PRESS (Sept. 27, 2013, 10:37 PM), <http://www.freep.com/article/20130927/NEWS01/309270084/> (reporting the recent financial assistance from the Obama administration, which includes "\$150 million for blight removal and redevelopment").

25. Bill McGraw, *Dan Gilbert is Planning to Tear Down Every Single Abandoned Building in Detroit*, DEADLINE DETROIT (Oct. 1, 2013, 12:15 AM), http://www.deadline-detroit.com/articles/6587/dan_gilbert_is_planning_to_demolish_every_last_abandoned_building_in_detroit#.Up5wXNJdVp (reporting the interest of one of Detroit's most influential private investors, Dan Gilbert, who stated that "[t]o get the neighborhoods going, we've got to take town [sic] the 78,000 or so" abandoned structures in order to spur private redevelopment); J.C. Reindl, *Young Bill Pulte Sees a Future in Fighting Detroit Blight*, DETROIT FREE PRESS (Jul. 7, 2013), <http://www.freep.com/article/20130707/BUSINESS06/307070057> (detailing the efforts of the recently formulated Detroit Blight Authority, a non-profit organization, to meet its objective of "total blight elimination" in the city of Detroit through public and private funding).

26. KEVYN D. ORR, OFFICE OF EMERGENCY MANAGER, CITY OF DETROIT, FINANCIAL AND OPERATING PLAN 9 (2013), available at http://www.detroitmi.gov/Portals/0/docs/EM/Reports/City%20of%20Detroit%20-%20Final%20Financial%20&%20Operational%20Plan%20_45%20Day%20Pl.pdf.

27. Motor City Blight Busters is a non-profit organization that focuses on utilizing volunteers to tear down abandoned homes and supporting community-based redevelopment in blighted neighborhoods throughout Detroit. MOTOR CITY BLIGHT BUSTERS, <http://www.mcbbdetroit.com/> (last visited Feb. 22, 2014). The Detroit Mower Gang consists of a group of volunteers that regularly mow abandoned parks and playgrounds in Detroit that the city is financially unable to maintain. See Tammy Stables Battaglia, *Detroit Mower*

One of the most well-known examples of community-driven responses to the problems presented by abandoned properties is urban farming.²⁸ In Detroit and other cities across the country, vast urban farming networks have been organized on a grassroots level both as a response to the problems posed by abandoned properties,²⁹ and because city governments are perceived as largely incapable of remedying those problems.³⁰ As one urban farmer noted, “the cavalry might not be coming” and therefore Detroit residents have taken neighborhood revitalization upon themselves.³¹

Detroit has proven to be especially fertile ground for urban agriculture. While urban agriculture has recently garnered a great deal of attention as a potential solution to Detroit’s current woes,³² it has a long history in the city as a solution to the problems of population loss and abandoned properties.³³ The city’s modern urban farming movement has roots dating back to the 1970s when then-Mayor Coleman Young started the Farm-A-Lot program.³⁴ The program provided “land, seeds, and tools to the new garden-gardeners” and, similar to today, was focused on providing a solution to the increasing prevalence of vacant land in the city, which was at the time undergoing drastic population loss.³⁵ However, like many city programs, Farm-A-Lot was phased out due to budget constraints.³⁶ Since the end of Farm-A-Lot in the early 2000s, the Garden Resource Program Collaborative (the Collaborative) has largely driven urban agriculture in Detroit.³⁷

The Collaborative, consisting of the Greening of Detroit, the Detroit Agriculture Network, Earthworks Urban Farm and Capuchin Soup Kitch-

Gang Ready to Do a Lawn Marathon at City Playgrounds, DETROIT FREE PRESS (May 21, 2013), <http://www.freep.com/article/20130521/NEWS01/305210017/>.

28. See Stacey Slate, *Planting Roots in Abandoned Lots: Mark MacInnis’ Documentary on Detroit’s Urban Farms*, CIVIL EATS (Apr. 16, 2012), <http://civileats.com/2012/04/16/planting-roots-in-abandoned-lots-mark-macinnis-documentary-on-detroits-urban-farms/>.

29. See, e.g., Jane C. Timm, *Urban Farming Takes Hold in Blighted Motor City*, MSNBC.COM (updated Sept. 25, 2013, 5:40 AM), <http://www.msnbc.com/morning-joe/urban-farming-takes-hold-blighted-motor>.

30. See John Gallagher, *With Their City Shrinking, Many Detroiters Use Empty Lots to Grow Gardens*, DETROIT FREE PRESS (Apr. 9, 2012), <http://www.freep.com/article/20120409/BUSINESS06/204090356/>.

31. *Id.* (quoting Kofi Royal, a Detroit community gardener); see FOOD SYSTEM REPORT, *supra* note 6, at 4 (stating that “Detroit has more community gardens per square mile than any other city in the United States”).

32. Gallagher, *supra* note 30.

33. In 1894, then-Mayor of Detroit Hazel Pingree launched his “potato patch plan” as a work-relief measure during the second summer of the depression in 1894. The program enrolled 1,546 families and raised \$30,998 in 1896. MELVIN G. HOLLI, *REFORM IN DETROIT: HAZEN S. PINGREE AND URBAN POLITICS* 70 (Richard C. Wade ed., 1969).

34. FOOD SYSTEM REPORT, *supra* note 6, at 16.

35. *Id.*

36. *Id.* at 17.

37. See *id.* at 17–19.

en, the Michigan State University Extension, and hundreds of community-based organizations, has expanded the urban farming network by providing seeds, tools, compost, soil tests, and volunteers to urban farmers.³⁸ Largely due to the community organization efforts of the Collaborative, Detroit now has 1,416 urban farms registered with the Collaborative,³⁹ and has “more community gardens per square mile than any other city in the United States.”⁴⁰ Of those 1,416 farms, 408 are community farms and 79 are market farms.⁴¹ Since the phase out of the Farm-A-Lot program and the rise of the Collaborative, urban agriculture in Detroit has, for the most part, been a community-based movement with the city government remaining on the sidelines.⁴² While the urban agriculture network has flourished despite a lack of municipal involvement, the practice is not without its issues.

B. Obstacles to Urban Agriculture

Despite the expansiveness of the Detroit urban agriculture network and the many benefits that urban farms provide to the city and its residents, obstacles remain, such as establishing farms on potentially contaminated land. Due to both historical and current factors, cities like Detroit have a large number of brownfields, which often go unidentified, unremediated, and undeveloped.⁴³ The threat of contamination creates or exacerbates two main obstacles for urban agriculture. First, it creates issues of possible food and farmer safety. Second, it exacerbates the already present financial obstacles faced by the urban agriculture community.

38. *Id.* at 17–18.

39. GARDEN RES. PROGRAM COLLABORATIVE, 2012 ANNUAL REPORT (2013).

40. FOOD SYSTEM REPORT, *supra* note 6, at 4.

41. GARDEN RES. PROGRAM COLLABORATIVE, *supra* note 39, at 1. Community farms are “tended by groups of neighbors who share the harvest.” FOOD SYSTEM REPORT, *supra* note 6, at 23. Market farms are production-focused farms that are more focused on turning a profit. *Id.*

42. Larry Gabriel, *Dig it: Detroit’s Urban Farms are Nothing New, but Newly Popular*, BRIDGE (June 2, 2013), <http://bridgemi.com/2013/06/dig-it-detroits-urban-farms-are-nothing-new-but-newly-popular/>.

43. For example, the Illinois Environmental Protection Agency considers over half of the city of Chicago’s land area to be contaminated. Matthew D. Fortney, Comment, *Devolving Control over Mildly Contaminated Property: The Local Cleanup Program*, 100 NW. U. L. REV. 1863, 1864 n.8 (2006) (citing data from the Illinois Environmental Protection Agency); *see also* Eisen, *supra* note 12, at 891 (noting that while “brownfields exist in many areas, they are concentrated in aging, predominantly minority and lower-income neighborhoods of ‘Rust Belt’ cities” (footnotes omitted)).

1. Food and Farmer Safety

As cities have become more intimately involved with urban farming, some have come to realize not only that soil contamination may present a real problem to urban farms, but also that to date that problem has gone largely unaddressed.⁴⁴ This has left many concerned that urban farming may jeopardize the health of both farmers and consumers, or at least raise substantial concerns among consumers about food safety, thus limiting the viability of urban farming as a redevelopment strategy.⁴⁵

As noted by the Environmental Protection Agency (EPA), there are two main policy gaps in this area. First, “there are no definitive standards for soil contaminant levels safe for food production that reflect the soil site conditions and management practices common at agricultural sites.”⁴⁶ The EPA and the Department of Housing and Urban Development advise remediation if lead levels “exceed 400 [parts per million] in children’s play areas and 1,200 [parts per million] elsewhere.”⁴⁷ While the Greening of Detroit has adopted that standard as a general cutoff for potential urban agriculture sites,⁴⁸ other cities have adopted a stricter standard.⁴⁹ The second policy gap identified by the EPA concerns contaminated soil and its impact on food safety, as “neither [the Food and Drug Administration] nor [the United States Department of Agriculture] have standards that regulate the quality of soil as a growing medium.”⁵⁰

These rather glaring gaps in policy have placed the burden on local organizations to self-regulate, and this burden has resulted in a gap in practice.⁵¹ “A recent compendium of urban agriculture practice and planning by the American Planning Association . . . noted few local requirements for soil testing and very few examples of locally driven test-

44. In Montreal, toxicologist shut down “167 community garden plots for having impermissibly high levels of soil contamination.” Platt, *supra* note 9, at 1508. In suburban San Francisco, a resident believed her family’s health problems stemmed from eating vegetables grown in her backyard. *Id.* at 1508–09.

45. SARAH TREUHAF, MICHAEL J. HAMM & CHARLOTTE LITJENS, HEALTHY FOOD FOR ALL: BUILDING EQUITABLE AND SUSTAINABLE FOOD SYSTEMS IN DETROIT AND OAKLAND 11 (2009), available at <http://www.policylink.org/atf/cf/%7B97C6D565-BB43-406D-A6D5-ECA3BBF35AF0%7D/Healthy%20Food%20For%20All-8-19-09-FINAL.pdf>.

46. EPA INTERIM GUIDELINES, *supra* note 13, at 2.

47. Kate Murphy, *For Urban Gardeners, Lead is a Concern*, N.Y. TIMES (May 13, 2009), <http://www.nytimes.com/2009/05/14/garden/14lead.html?pagewanted=1&r=1>.

48. CLEARCORP/DETROIT, LEAD SAFE GARDENING, available at http://www.niehs.nih.gov/health/assets/docs_f_o/pamphlet_lead_safe_gardening_english.pdf.

49. In Minneapolis, lead levels of 100 parts per million are considered hazardous. Murphy, *supra* note 47.

50. EPA INTERIM GUIDELINES, *supra* note 13, at 2.

51. *Id.*

ing on behalf of community organizations.”⁵² Some organizations test only for agronomic parameters, such as nitrogen, phosphorus, and potassium levels, while a “smaller subset” of organizations tests for soil contaminants.⁵³ Of this smaller subset, many test only for lead.⁵⁴ However, considering that urban farming networks in many cities are facilitated largely by non-profit organizations with limited resources,⁵⁵ the extent to which one should rely on those parties to promulgate and implement effective food and farmer safety regulations is questionable.

Given the prevalence of brownfields in cities such as Detroit, the lack of comprehensive soil testing may present serious health concerns in regards to both the farmers and the food grown.⁵⁶ In Detroit, many properties have soil with high lead concentrations,⁵⁷ largely as a result of the demolition of abandoned buildings that were coated with lead paint, “emissions from lead-based gasoline engines, and airborne lead contaminants from the city’s industry.”⁵⁸ Beyond lead contamination, toxic amounts of petroleum hydrocarbons, solvents, and various heavy metals from a variety of sources are common in urban soil.⁵⁹ The public health impacts from the wide array of hazardous substances that saturate the Detroit landscape are particularly acute in regards to children.⁶⁰

While the Garden Resource Program Collaborative and the urban agriculture ordinance both seek to address the issue of soil contamination, both

52. *Id.* (referencing KIMBERLEY HODGSON ET AL., URBAN AGRICULTURE: GROWING HEALTHY, SUSTAINABLE PLACES (2011)).

53. *Id.*

54. *Id.*

55. See generally Kathryn A. Peters, *Current and Emerging Issues in the New Urban Agriculture: A Case Study*, 7 J. FOOD L. & POL’Y 297, 299 (2011).

56. Mogk et al., *supra* note 5, at 1535–37.

57. *Id.* at 1536.

58. *Id.* at 1537. “A study shows that between 1950 and 1984 cars and trucks in Michigan emitted about 182,000 metric tons of lead and that in the year 2000 alone, Michigan companies legally released 24,345 pounds of lead and lead compounds.” *Id.* (citing Wendy Wendland-Bowyer, *Hazards Lurking in Soil as Children Play*, DETROIT FREE PRESS (Jan. 23, 2003), <http://www.earlychildhoodmichigan.org/articles/1-03/FREEP1-23-03c.htm>).

59. ALLISON HOULIHAN TURNER, ENVTL. FIN. CTR., UNIV. OF LOUISVILLE, URBAN AGRICULTURE AND SOIL CONTAMINATION: AN INTRODUCTION TO URBAN GARDENING 2 tbl.1 (2009), available at <http://louisville.edu/cepm/publications/practice-guides-1/PG25%20-%20Urban%20Agriculture%20-%20Soil%20Contamination.pdf> (citing ALEXANDRA HEINEGG ET AL., MCGILL UNIV., SOIL CONTAMINATION AND URBAN AGRICULTURE: A PRACTICAL GUIDE TO SOIL CONTAMINATION ISSUES FOR INDIVIDUALS AND GROUPS (2002), available at <http://www.ruaf.org/sites/default/files/guide%20on%20soil%20contamination.pdf> (identifying trash incinerators, sewage sludge, petroleum spills, and commercial and industrial sites as common sources of pollution)).

60. Mogk et al., *supra* note 5, at 1537 (citing Tina Lam & Kristi Tanner-White, *High Lead Levels Hurt Learning for DPS Kids*, DETROIT FREE PRESS (May 16, 2010), <http://www.freep.com/article/20100516/news01/5160413> (finding that of the 39,000 Detroit Public School children tested, 58 percent had a history of lead poisoning)).

do so in a limited fashion. The Garden Resource Program Collaborative does test soil for farms registered with the Collaborative, but they test only for lead.⁶¹ The urban agriculture zoning ordinance is similarly limited in its scope. Passed in April 2013, the ordinance established a site plan review process, which most relevantly includes a requirement of a “narrative” that describes, among other things, the “evaluation of existing soil conditions” and a description of “plans to mitigate soil issues” if necessary.⁶² While Detroit’s urban agriculture ordinance and the site plan review process it formulated is a step in the right direction, it is, as the city itself has noted, only the initial step, and further development of regulations and policies for urban agriculture are necessary.⁶³ To fully address the issue of food and farmer safety, Detroit and its community farmers need a more systematic and consistent approach to identifying and addressing contamination on community-based urban farms.

2. Financial Obstacles

For many urban farms, regardless of whether soil contamination exists, start-up costs present a potential obstacle. This obstacle is especially important for community farms, which generally do not generate a profit, but it is also important for market farms started by non-profit organizations or Detroit residents, which generally operate on tight budgets. The general start-up costs for urban farms may consist of anything from acquisition or lease of land to the construction of irrigation systems.⁶⁴ Further, the issues of food and farmer safety also create a need for comprehensive soil testing and, in some cases, remediation, both of which add costs to any farming operation.⁶⁵

61. See CLEARCORPS/DETROIT, *supra* note 48.

62. See DETROIT, MICH., MUN. CODE § 61-3-128(9)(g) (2013). While the site plan review process is mostly overseen by the Planning and Development Department, numerous other city agencies are also authorized to participate in the review. See § 61-3-141.

63. See CITY PLANNING COMM’N, CITY OF DETROIT, RE: THE PROPOSAL TO AMEND CHAPTER 61 OF THE 1984 DETROIT CITY CODE, ZONING, WITH REGARD TO PROVISIONS FOR URBAN AGRICULTURE 3 (2013), available at http://www.detroitmi.gov/Portals/0/docs/legislative/cpc/pdf/Report_11Feb13.pdf (noting that the Urban Agriculture Workgroup “will be an ongoing advisory group . . . as the City continues to devise regulations and policies for agriculture; as well as dealing with additional programmatic and other activities associated with helping agriculture in Detroit to succeed”).

64. See, e.g., BARBARA LUND ET AL., CITY OF CLEVELAND—FINAL REPORT TO FRAN DIDONATO 16, available at <http://cccfoodpolicy.org/sites/default/files/resources/Urban%20Agriculture%20Final%20Report%20-%20CWRU%20Weatherhead.pdf>.

65. See EPA INTERIM GUIDELINES, *supra* note 13, at 15 (noting that “costs for implementing [soil] cleanup, such as transportation and disposal of dirty soils or clean fill, may have huge implications on the viability” of food production on contaminated property).

While these costs may be outweighed by the benefits an urban farm may provide, there is currently a lack of financing. As mentioned previously, in its current form the urban agriculture network has been organized by a consortium of non-profit organizations, community groups, churches, and universities. While the Collaborative has been able to oversee the expansion of the urban agriculture network through a combination of private donations, community organization, and volunteer recruitment, its ability to provide financial support to the urban agriculture community is limited by their finite resources and non-profit status.⁶⁶ Some urban agriculture networks have received financial support in the form grants from their city,⁶⁷ but given Detroit's well-documented financial situation, the urban agriculture community will likely not be able to turn to the city for assistance with any relevant start-up costs.⁶⁸

II. BROWNFIELDS AND THE LEGAL LANDSCAPE

Similar to abandoned properties, cities have historically struggled with the problem of redeveloping brownfields.⁶⁹ However, unlike abandoned properties, cities have a viable strategy for brownfield redevelopment in the form of voluntary cleanup statutes and state-backed incentive schemes.⁷⁰ While the voluntary cleanup statutes vary in their methods of incentivizing brownfield redevelopment, most have modified the strict liability scheme of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by granting some form of protection against future state enforcement actions to the redeveloper, permitting variable cleanup standards that link the level of required cleanup to the future use of the site, and providing financial incentives for redevelopers.⁷¹ The initial testing and

66. The Garden Resource Program Collaborative has largely organized the urban agriculture network through neighborhood cluster groups. *See infra* notes 224–26 and accompanying text.

67. The city of Cleveland's economic development department started a program, called "Gardening for Greenbacks," that "provides grants up to \$3,000 to urban farmers for tools, irrigation systems, rain barrels, greenhouses, display equipment, and signage." HAGEY, *supra* note 8, at 35. Further, "[c]ities such as Madison, Cleveland, and Boston use Community Development Block Grant funds to develop urban agriculture projects." *Id.*

68. With Detroit crippled by what is estimated to be approximately \$18 billion of debt, the appointed Emergency Financial Manager Kevyn Orr filed for bankruptcy on behalf of the city of Detroit in July 2013. *See generally* Monica Davey & Mary Williams Walsh, *Billions in Debt, Detroit Tumbles Into Insolvency*, N.Y. TIMES (July 18, 2013), http://www.nytimes.com/2013/07/19/us/detroit-files-for-bankruptcy.html?_r=1&.

69. *See* Eisen, *supra* note 12, at 914 (stating that, absent incentives, many prospective purchasers of brownfield sites view the costs of redevelopment as exceeding the benefits, and therefore redevelopment projects do not take place).

70. *See id.* at 915.

71. *See id.* at 920–21.

cleanup requirements and the financing opportunities available through these brownfield statutes provide a means by which urban agriculture can become both safer and more financially secure.

Michigan's approach has been particularly innovative, as it has been specifically formulated to encourage redevelopment through "private initiatives and public support."⁷² It has also expanded the category of land that can receive redevelopment incentives to include non-contaminated properties.⁷³ Michigan has done this through two primary statutes: Part 201 of the Natural Resources and Environmental Protection Act and the Brownfield Redevelopment Financing Act (BRFA).⁷⁴

A. Natural Resources and Environmental Protection Act

The Natural Resources and Environmental Protection Act (NREPA) is Michigan's version of CERCLA and is distinguished from the federal statute in one important respect. As opposed to the strict liability standard under CERCLA, Michigan abolished retroactive liability for new owners and operators not responsible for site contamination.⁷⁵ However, even though owners and operators are not subject to strict liability, they do have an affirmative duty to identify existing contamination through the completion of a Baseline Environmental Assessment (BEA).⁷⁶

A BEA first requires a Phase I Environmental Site Assessment (ESA). Phase I consists of research and physical inspection of the property, with the research consisting of an examination of regulatory agency files and historical maps to determine past uses of the property.⁷⁷ When necessary, a Phase II ESA is performed.⁷⁸ Phase II entails a much more detailed scientific process that may include the collection of soil and groundwater samples to determine the extent of the contamination.⁷⁹

72. RICHARD C. HULA, LAURA A. REESE & CYNTHIA JACKSON-ELMOORE, RECLAIMING BROWNFIELDS: A COMPARATIVE ANALYSIS OF ADAPTIVE REUSE OF CONTAMINATED PROPERTIES 342 (2012).

73. *E.g.*, MICH. COMP. LAWS ANN. § 125.2652(e) (West 2013).

74. *Id.* §§ 125.2651-.2672, 324.201.

75. *Id.* § 324.20126.

76. *Id.* §§ 324.20101(1)(c), 324.20101(1)(f) (defining a BEA as "an evaluation of environmental conditions [which exist at a facility] at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances" at the facility so that, in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination).

77. MICH. DEP'T OF ENVTL. QUALITY, PART 201 CITIZEN'S GUIDE: BASELINE ENVIRONMENTAL ASSESSMENTS (2011), *available at* http://www.michigan.gov/documents/deq/deq-rrd-BEA-BEACitizensGuide_357377_7.pdf.

78. *Id.*

79. *Id.*

Along with the BEA requirements, there is an affirmative duty to comply with “due care” requirements by undertaking “response activity necessary to mitigate unacceptable exposure to hazardous substances”⁸⁰ and “measures . . . to prevent exacerbation” of existing pollutants,⁸¹ as well as taking “reasonable precautions against the reasonably foreseeable acts or omissions of a third party” to prevent third-party exposure.⁸² Also, Part 201 provides three standards of remediation: residential, commercial, and industrial.⁸³ Within each standard, there is a limited and unlimited land use category.⁸⁴ The limited category generally requires engineering or institutional controls to limit exposure to existing contaminants, while the unlimited category requires a more stringent cleanup, but no engineering or institutional controls.⁸⁵

B. Brownfield Redevelopment Financing Act

Separate from the NREPA, Michigan passed the BRFA as a means to establish financing for redevelopment activities on brownfields.⁸⁶ The BRFA authorizes municipalities to create a Brownfield Redevelopment Authority (BRA) to promote localized planning and implementation of brownfield redevelopment, which Detroit has done with the establishment of the Detroit Brownfield Redevelopment Authority (DBRA).⁸⁷ While localized brownfield redevelopment authorities like the one in Detroit have several powers,⁸⁸ perhaps the most notable are the ability to “[i]ncur and expend funds to pay or reimburse a public or private person for costs of eligible activities attributable to an eligible property”⁸⁹ and the power to “[b]orrow money and issue its bonds and notes . . . in anticipation of collection of tax increment revenues.”⁹⁰

1. Substantive Provisions

Under the BRFA, both “eligible activities” and “eligible properties” are broadly defined. An eligible property is defined to include both “function-

80. MICH. COMP. LAWS ANN. § 324.20107a(1)(b) (West 2013).

81. *Id.* § 324.20107a(1)(a).

82. *Id.* § 324.20107a(1).

83. *Id.* § 324.20120a.

84. *Id.* § 324.20120b.

85. *Id.*

86. *Id.* §§ 125.2651–.2672.

87. *Id.* § 125.2653(1).

88. *Id.* § 125.2657.

89. *Id.* § 125.2657(1)(b).

90. *Id.* § 125.2657(1)(m). This must be done under the Revised Municipal Finance Act. Revised Municipal Finance Act, 2001 Mich. Pub. Acts 83 (codified at MICH. COMP. LAWS § 141.2101).

ally obsolete” and “blighted” properties.⁹¹ A blighted property is any that: “[h]as been declared a public nuisance”; “[i]s an attractive nuisance to children”; is “dangerous to the safety of persons or property”; “[h]as had the utilities . . . permanently disconnected . . . or rendered ineffective”; is a “tax reverted property” owned by the city, county, or state; or is owned by a “land bank fast track authority.”⁹² A functionally obsolete property is any property that is “unable to be used to adequately perform the function for which it was intended due to a substantial loss in value.”⁹³

It is hard to overstate the expansiveness of this statutory language. Considering the prevalence of vacant land in Detroit, a very large amount of property is likely eligible property as defined by the BRFA. Much of Detroit’s vacant property could fall under the “blight” definition based either on a nuisance theory or based on the theory that vacant lots are “dangerous to the safety of persons or property” considering the connection between vacant lots and illegal activities.⁹⁴

Even if one narrows the focus to those properties that have been foreclosed upon for tax reasons and are thus under control of the city or the county, the possibilities for expanding urban farming are still immense.⁹⁵ Detroit has a large number of tax reverted properties and has had trouble efficiently transferring that land to citizens in a way that furthers urban revitalization.⁹⁶ Just in the past decade, “the Wayne County Treasurer’s Office has foreclosed on tens of thousands of properties within Detroit for failure to pay property taxes.”⁹⁷ The auction process for these tax reverted properties has left much to be desired, particularly due to insufficient revenue from such auctions and the lack of positive reuse by the auction purchasers.⁹⁸ Vacant properties have presented the greatest problem in this instance.⁹⁹ Not only are vacant properties more difficult to sell, but even

91. MICH. COMP. LAWS ANN. § 125.2652(o) (West 2013).

92. *Id.* § 125.2652(e)(i)–(v).

93. *Id.* § 125.2652(s).

94. *Id.* § 125.2652(e); *see also* Kraut, *supra* note 19.

95. Section 125.2652(e)(v) includes tax reverted properties owned by local governments in the definition of “blight” and are thus eligible properties. MICH. COMP. LAWS ANN. § 125.2652(e)(v) (West 2013).

96. *See* CATHERINE COENEN ET AL., TAUBMAN COLL. OF ARCHITECTURE & URBAN PLANNING, FROM REVENUE TO REUSE: MANAGING TAX-REVERTED PROPERTIES IN DETROIT 3–4 (2011), *available at* http://taubmancollege.umich.edu/planning/students/student_work/project_galleries/revenue_reuse_managing_tax_reverted_properties_detroit/.

97. *Id.* at xi.

98. *Id.*

99. In part to address this problem, Michigan has developed several programs to encourage urban agriculture on vacant land. Established in 2003, the Land Bank Fast Track Authority acquires, inventories, and conveys tax reverted properties to foster the development of that property and promote economic growth. Land Bank Fast Track Act, 2003 Mich. Pub. Acts 1357 (codified at MICH. COMP. LAWS § 124.751). While it is within the

when purchased, 70 percent of vacant properties sold through auction are never improved by the purchaser and are often left unchanged and undeveloped.¹⁰⁰ Under this broad definition of “eligible properties,” urban farming could gain access to financing while also addressing the problems that these vacant properties have presented to the city of Detroit.

Like the definition of eligible properties, the definition of activities eligible for funding on these properties is quite broad. The list of eligible activities includes the activities one might imagine are associated with brownfield redevelopment, such as baseline environmental assessment activities¹⁰¹ and due care activities.¹⁰² In addition to these two activities, the most relevant eligible activities for urban farming include lead or asbestos abatement,¹⁰³ additional response activities,¹⁰⁴ and infrastructure improvements that directly benefit eligible property.¹⁰⁵ In the context of urban agriculture, these may consist of anything from materials to build raised beds to topsoil or clean fill from certified soil sources.¹⁰⁶ However, the definition of eligible activities also includes things that have little to do with remediating toxic contamination, such as infrastructure improvements, which could be interpreted to include greenhouses, hoop houses, and water systems.¹⁰⁷ While these are only a few examples, the full range of choices

Authority’s discretion to determine the consideration and terms of conveyance regarding property within its control, both green space and agriculture are within the uses to be considered. MICH. LAND BANK FAST TRACK AUTH., GUIDELINES: POLICIES AND PROCEDURES FOR PROPERTY ACQUISITION AND DISPOSITION 6 (2007), *available at* http://www.michigan.gov/documents/dleg/Michigan_Land_Band_Fast_Track_Authority_Policies_Procedures_-_09012007_267170_7.pdf. Further, Garden for Growth Program, which is run by the Land Bank Fast Track Authority, provides low-cost leases to the urban agriculture community, which greatly reduces an initial start-up cost hurdle. The lease price is \$25 per year, with a one-year or three-year option. MICH. LAND BANK FAST TRACK AUTH., GARDEN FOR GROWTH APPLICATION, *available at* http://www.michigan.gov/documents/landbank/Garden_for_Growth_Application_385926_7.pdf.

100. COENEN ET AL., *supra* note 96, at 52.

101. MICH. COMP. LAWS ANN. § 125.2652(n)(i) (West 2013).

102. *Id.* § 125.2652(n)(ii).

103. *Id.* § 125.2652(n)(iv)(C).

104. *Id.* § 125.2652(n)(iii).

105. *Id.* § 125.2652(n)(iv)(A).

106. Due care activities are defined as “those response activities identified as part of a brownfield plan that are necessary to allow the owner or operator of an eligible property in the plan to comply with the requirements of section 20107a of the [NREPA].” *Id.* § 125.2652(l). Section 20107a of NREPA establishes the duties of owners or operators who have knowledge that their property is contaminated. *Id.* § 324.20107(a).

107. Eligible activities include infrastructure improvements if the eligible property “was used or is currently used for commercial, industrial, or residential purposes that is in a qualified governmental unit, that is owned or under the control of a land bank fast track authority, or that is located in an economic opportunity zone, and is a facility, historic resource, functionally obsolete, or blighted.” MICH. COMP. LAWS ANN. § 125.2652(n)(iv)

available to the urban agriculture community will be discussed further in Part III.

2. Procedural Provisions

Procedurally, the BRFA is more constraining. In Detroit, the DBRA is responsible for implementing a brownfield plan, which may apply to one or more parcels of eligible property.¹⁰⁸ To be a part of a brownfield plan, potential redevelopers apply to the DBRA. The application consists of preparing a brownfield plan and presenting the plan to the DBRA Board of Directors and DBRA Community Advisory Committee.¹⁰⁹ A brownfield plan must include a description of any costs that are “to be paid for with the tax increment revenues,”¹¹⁰ a “brief summary the of eligible activities” proposed,¹¹¹ an “estimate of the captured taxable value and tax increment revenues for each year of the plan from the eligible property,”¹¹² and an “estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the eligible property is located.”¹¹³ Beyond the application process, a brownfield plan must also be subject to a public hearing.¹¹⁴

After this application process is complete, the Detroit city council determines whether the plan constitutes a “public purpose,” as well as whether the plan’s proposed method of financing is “feasible.”¹¹⁵ The city council has broad discretion to approve, reject, or modify the plan.¹¹⁶ Further, if a brownfield plan seeks to use school taxes to pay for eligible activities,¹¹⁷ it is possible that the developer will be required to obtain approval of a work plan from either the Michigan Department of Environmental Quality

(West 2013). See *id.* § 125.2652(v) for the statutory category of “infrastructure improvements.”

108. MICH. COMP. LAWS ANN. § 125.2663(1) (West 2013).

109. *DBRA Application Process*, DEGC, <http://www.degc.org/about-degc/dbraapplication-process> (last visited Feb. 23, 2014).

110. MICH. COMP. LAWS ANN. § 125.2663(1)(a) (West 2013).

111. *Id.* § 125.2663(1)(b).

112. *Id.* § 125.2663(1)(c).

113. *Id.* § 125.2663(1)(g).

114. *Id.* § 125.2663(10).

115. *Id.* § 125.2664(1).

116. *Id.*

117. School taxes include taxes levied for school operating purposes and taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906. MICH. COMP. LAWS ANN. § 125.2652(kk)(i)–(ii) (West 2013). It is important for those seeking financing under the BRFA to be mindful of the property taxes that are utilized for school operating purposes. The 2013 budget for Detroit Public Schools stated that \$76,339,168 of its revenue for the 2013 fiscal year will come from property taxes. DETROIT PUB. SCHS., ADOPTED FISCAL YEAR 2013 OPERATING BUDGET, at 32, available at http://detroitk12.org/data/finance/docs/FY2013_Adopted_Budget.pdf.

(MDEQ) or the Michigan Strategic Fund (MSF).¹¹⁸ In reviewing work plans, the MDEQ looks to whether “[t]he due care activities and response activities . . . are protective of the public health, safety, and welfare and the environment” as well as whether the “estimated costs for the activities as a whole are reasonable for the stated purpose.”¹¹⁹ Alternatively, the MSF analyzes a wide array of criteria, the most significant of which includes “[w]hether the cost for each individual activity [in the brownfield plan] is reasonable.”¹²⁰

3. Financing Powers

Assuming a brownfield plan has been approved by all of the appropriate entities, the DBRA has substantial discretion in dispensing funds and implementing the plan.¹²¹ The DBRA can “[i]ncur and expend funds to pay or reimburse a public or private person for costs of eligible activities attributable to an eligible property,”¹²² “incur costs and expend funds from the local site remediation revolving fund created under section 8 [of the BRFA],”¹²³ and “[m]ake and enter contracts necessary or incidental to the exercise of its powers . . . including, but not limited to, lease purchase agreements, land contracts, installment sales agreements, and loan agreements.”¹²⁴

While the financing centerpiece in the BRFA is tax increment revenue, it should be noted that there are other sources of funding that can be dispensed by the DBRA to support community farms. Those are discussed below.

a. State and Federal Funding

First, the BRFA gives brownfield redevelopment authorities the power to “[a]ccept grants . . . from a public or private source.”¹²⁵ There are sever-

118. MICH. COMP. LAWS ANN. § 125.2663(15) (West 2013) (the Michigan Strategic Fund must give its approval before a brownfield plan can use taxes levied for school operating purposes for its own activities); *id.* § 125.2665(1)(a) (the MDEQ must give its approval before a brownfield plan can use taxes levied for school operating purposes for activities not described in section 13(15)). Created in 1984, the Michigan Strategic Fund is a public body within the Department of Treasury that seeks to “help diversify the economy of this state, to develop and expand existing and alternative sources of energy and the conservation of energy, [and] to assist business enterprise in obtaining additional sources of financing to aid this state in achieving the goal of long-term economic growth.” *Id.* § 125.2002.

119. MICH. COMP. LAWS ANN. § 125.2665(4)(a)–(c) (West 2013).

120. *Id.* § 125.2665(15)(a)–(n).

121. *Id.* § 125.2657.

122. *Id.* § 125.2657(1)(b).

123. *Id.* § 125.2657(c).

124. *Id.* § 125.2657(d).

125. *Id.* § 125.2657(1)(g).

al brownfield redevelopment grants, both at the federal and state level, that are available to municipal applicants.¹²⁶ Michigan has been a particularly ambitious state in providing funds for brownfield redevelopment.¹²⁷ Specifically, Michigan voters have passed two bond initiatives to fund brownfield redevelopment: the Environmental Protection Bond Fund in 1988 and the Clean Michigan Initiative in 1998. The two initiatives authorized over \$720 million in bond funds for brownfield redevelopment.¹²⁸ The state has also established a Revitalization Revolving Loan Fund, with an initial legislative allocation of \$5 million.¹²⁹

The most relevant grant programs are the Brownfield Redevelopment Grants program and Revitalization Revolving Loans.¹³⁰ The Brownfield Redevelopment Grants program provides “funding to local units of government and other public bodies to investigate and remediate known sites of environmental contamination in preparation for economic redevelopment projects.”¹³¹ Brownfield Redevelopment Authorities are eligible to apply for funds,¹³² and in 2011 three projects in Wayne County were awarded a cumulative total of \$1.2 million in Brownfield Redevelopment Grant funds.¹³³ Revitalization Revolving Loans are low-interest loans available to

126. See *Brownfield Grants and Loans*, MICH. DEP’T OF ENVTL. QUALITY, http://www.michigan.gov/deq/0,4561,7-135-3311_4109_29262---,00.html (last visited Feb. 23, 2014); *Brownfields Newsroom Announcements*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/brownfields/news/index.htm> (last visited Feb. 23, 2014).

127. See HULA, REESE & JACKSON-ELMOORE, *supra* note 72.

128. The Environmental Protection Bond Fund “included \$45 million specifically targeted for site redevelopment purposes.” *Id.* at 342. It funded the Site Assessment Grant Program and the Site Reclamation Grant Program. Clean Michigan Initiative (CMI) authorizes “\$675 million in general obligation bond funds for environmental cleanup efforts, with a significant portion of the funding dedicated to programs supporting local redevelopment efforts. Among the CMI brownfield redevelopment programs are the Brownfield Redevelopment Grant Program, established with \$37.5 million; Brownfield Redevelopment Loan Program, established with another \$37.5 million in CMI funds; and a \$50 million allocation for a Waterfront Redevelopment Grant Program.” *Id.*

129. *Id.*

130. While the Site Assessment Fund Grant program has current active grant projects, the grant and loans catalog for the Michigan Department of Environmental Quality states that “no future funding is anticipated” and “applications are no longer being accepted.” MICH. DEP’T OF ENVTL. QUALITY, *Brownfield Redevelopment Grants and Loans: Site Assessment Fund Grants*, in GRANTS AND LOAN CATALOG 8 (2013), available at http://www.michigan.gov/documents/deq/deq-essd-grantsloans-catalog_210643_7.pdf.

131. MICH. DEP’T OF ENVTL. QUALITY, *Brownfield Redevelopment Grants and Loans: Brownfield Redevelopment Grants and Site Reclamation Program Grants*, in GRANTS AND LOAN CATALOG, *supra* note 130, at 4.

132. *Id.*

133. This includes \$480,000 for Piquette Square Project, \$160,000 for Detroit Creative Arts Center project, and \$595,000 for Abercrombie Southgate Redevelopment project. Notably, none of these grants were secured by the DBRA. MICH. DEP’T OF ENVTL. QUALITY, BROWNFIELD REDEVELOPMENT GRANT AND LOAN PROJECTS: PROJECTS

“local units of government and other public bodies to investigate and remediate sites of known or suspected environmental contamination” in order to promote the “reuse of abandoned, vacant, or underutilized contaminated properties, and to promote clean up and redevelopment of brownfields.”¹³⁴

The EPA has also been active in providing funds to local governments for many brownfield redevelopments, including urban farming. The Targeted Brownfields Assessments (TBA) program may be particularly useful in diffusing the costs of a baseline environmental assessment that would be required under the BRFA.¹³⁵ Unlike most other programs, “[t]he TBA program is not a grant program, but a service provided through an EPA contract in which EPA directs a contractor to conduct environmental assessment activities to address the requestor’s needs.”¹³⁶ TBA assistance is available from EPA Regional offices, which vary in their application criteria, but tend to be more favorable towards environmental justice redevelopment projects.¹³⁷ This is particularly appealing to urban farmers because environmental assessments are one of the key early funding hurdles that must be cleared before a project can move forward under the BRFA.¹³⁸

Aside from the TBA, the EPA also provides Brownfields Cleanup grants, which may be used to address sites contaminated by hazardous substances, pollutants, or contaminants.¹³⁹ Applications are accepted from state and local governments, redevelopment agencies such as the DBRA,

AWARDED SINCE FISCAL YEAR 2008 (STARTING OCTOBER 1, 2007) (2011), available at http://www.michigan.gov/documents/deq/deq-ess-bgl-table-recentglawards_232367_7.pdf.

134. The current interest rate is “set at 1.5%, simple interest. There are no payments or interest due for the first five years after a loan is awarded.” MICH. DEPT’ OF ENVTL. QUALITY, *Brownfield Redevelopment Grants and Loans: Revitalization Revolving Loans, in GRANTS AND LOAN CATALOG*, *supra* note 130, at 6.

135. The TBA has been used for urban agriculture projects. One example is the “\$24,000 in contractor-led TBA assistance” that was provided in Sacramento “to assess a former residential property that for over 30 years served as a . . . community garden. The assessment revealed the soil was contaminated with polycyclic aromatic hydrocarbons (PAHs), lead, and pesticides.” U.S. ENVTL. PROT. AGENCY, EPA TARGETED BROWNFIELDS ASSESSMENTS—THE BASICS (2007), available at http://www.epa.gov/brownfields/grant_info/tba_0403.pdf.

136. *Id.*

137. Generally, “preference will be given to sites which are publically owned, either directly by a municipality or through a quasi-public entity such as a community development corporation,” “have low to moderate contamination,” and “include environmental justice issues.” *Id.* However, the criteria are set by the regional EPA offices and therefore vary. *Id.*

138. Before a brownfield plan can be accepted by the city council, section 125.2664(1) requires a fairly definite estimation of costs. MICH. COMP. LAWS ANN. 125.2664(1) (West 2013). This can only be truly done after a Phase I ESA, which must be done by an environmental professional in accordance with NREPA.

139. U.S. ENVTL. PROT. AGENCY, *EPA Brownfields Cleanup Grants: Interested in Applying for Funding?* (2009) [hereinafter EPA CLEANUP GRANTS], available at http://www.epa.gov/brownfields/grant_info/cleanup/cleanup_factsheet.pdf.

and nonprofit organizations.¹⁴⁰ “Up to \$200,000 per site is available,” however, “no entity may apply for funding cleanup activities at more than five sites,” thus limiting its availability for repeated use.¹⁴¹

The EPA and state sources of grant funding are certainly important and have been obtained and used to promote urban agriculture on brownfields,¹⁴² but they are inherently limited in two respects. First, the application process is generally only open to state governments, city governments, city agencies, and nonprofit organizations; it is generally not open to private citizens or community organizations.¹⁴³ Thus, a community farm may be unable to obtain funds because its city is unable to secure a grant, or is otherwise unwilling to grant funds. Second, grant funds are inherently limited in that they provide funds for isolated projects based on applications for a specific location, and in many cases likely will not continually award funds to repeat municipal applicants.

b. Tax Increment Financing

A more sustainable financing solution exists in the BRFA itself, which authorizes a BRA to utilize tax increment financing to fund redevelopment projects. In general, tax increment financing works as follows: a bond issuer will “designate a geographic area that is likely to benefit” from the redevelopment of a vacant lot, then issue bonds to finance the redevelopment of that lot, and then finally “pay[] for the debt service on the bonds from the additional property tax revenues resulting from the increased value of properties within the [tax increment financing] district.”¹⁴⁴ However, the BRFA utilizes a slightly different model of tax increment financing.

The BRFA requires three things of a brownfield plan seeking tax increment financing. First, the plan must provide a description of the costs for which tax increment revenues will pay.¹⁴⁵ Second, it must provide an “estimate of the captured taxable value and tax increment revenues for each year of the plan from the eligible property.”¹⁴⁶ Third, the plan must clearly

140. *Id.*

141. *Id.*

142. *See, e.g., Success Stories & Ongoing Projects*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/brownfields/urbanag/success.htm> (last visited Feb. 23, 2014) (describing various urban agriculture projects funded by the EPA Brownfield Program).

143. EPA CLEANUP GRANTS, *supra* note 139; MICH. DEP’T OF ENVTL. QUALITY, *supra* note 130, at 8.

144. Ioan Voicu & Vicki Been, *The Effect of Community Gardens on Neighboring Property Values*, 36 REAL ESTATE ECON. 241, 242 n.2 (2008).

145. MICH. COMP. LAWS ANN. § 125.2663(1)(a) (West 2013).

146. *Id.* § 125.2663(1)(c).

identify the properties that will provide the captured taxes as well as the properties on which eligible activities will be conducted.¹⁴⁷

Under the BRFA, if a redeveloper intends to utilize tax increment revenues, they must designate one or more parcels of “eligible propert[y]” as being subject to tax capture.¹⁴⁸ As described previously, an eligible property must be “a facility, historic resource, functionally obsolete, or blighted” property and may also include “parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property” for which eligible activities are proposed.¹⁴⁹ Once the eligible property (or properties) has been designated, one must calculate how much the cleanup and redevelopment “will increase the taxable value of the property, and therefore, will increase the property taxes generated from the property.”¹⁵⁰ Any increase in tax value over the base year is referred to as a “tax increment” and the increased tax revenues are known as “tax increment revenues.”¹⁵¹ The tax increment revenues “can then be used to pay the expenses for eligible environmental response and non-environmental activities.”¹⁵²

The only relevant limits placed on the DBRA in regards to tax increment financing, other than the approval process discussed above, are: (1) the requirement to “hold a public hearing on the brownfield plan,”¹⁵³ (2) the thirty-year limit for the “capture of tax increment revenues under a brownfield plan for a particular eligible property,”¹⁵⁴ and (3) the requirement that “the captured taxable value of each parcel of eligible property” must be equal to or greater than zero.¹⁵⁵ Additionally, the city council must agree that the brownfield plan constitutes a “public purpose,” and that the proposed method of financing is “feasible.”¹⁵⁶

147. *Id.* § 125.2663.

148. *Id.* § 125.2663(a).

149. *Id.* § 125.2652(o)(i).

150. *Id.* § 125.2652(h); MICH. DEP'T OF ENVTL. QUALITY & MICH. ECON. DEV. CORP., ACT 381 GUIDANCE FOR BROWNFIELD PLANS, WORK PLANS AND COMBINED PLANS 4 (2013) [hereinafter ACT 381 GUIDANCE], available at <http://www.michiganbusiness.org/cm/Files/Brownfields/Act-381-Guidance.pdf>.

151. MICH. COMP. LAWS ANN. § 125.2652(ii) (West 2013); ACT 381 GUIDANCE, *supra* note 150, at 4.

152. ACT 381 GUIDANCE, *supra* note 150, at 4.

153. MICH. COMP. LAWS ANN. § 125.2663(10) (West 2013).

154. *Id.* § 125.2663(22).

155. *Id.* § 125.2657(2).

156. *Id.* § 125.2664(1)(b).

III. IMPLEMENTATION GUIDE

While the substantive provisions present an ample opportunity for non-profit organizations, community organizations, and private citizens to secure tax increment financing for eligible activities, navigating the process of obtaining such funds is more complex. Pro bono attorneys and other legal service providers focused on assisting community groups will have to help the urban agriculture community in navigating the BRFA, and in doing so should be mindful of three things. First, attorneys should seek to fully utilize the BRFA's funding mechanisms to provide for the needs of the urban agriculture community. Second, attorneys should select the path of least resistance in applying for tax increment financing. Third, attorneys should assist the urban agriculture community and the city of Detroit in developing site-specific cleanup criteria so as to limit potential liability under section 324.20126 of NREPA.

A. Securing and Utilizing Tax Increment Financing

As previously noted, the Detroit city council has the power to ultimately approve brownfield plans, and they look at whether the plan serves a public purpose and whether the financing strategy is feasible.¹⁵⁷ Given the numerous community benefits attributed to urban farming, it should be possible to show a "public purpose."¹⁵⁸ In order to obtain tax increment financing for urban farms, then, lawyers must be mindful of two things: (1) how much financing is available for the proposed farm; and (2) what activities are eligible for financing.

1. Securing Financing

In discerning what financing is available for urban agriculture projects, practitioners should recall that there are two sources of potential funding: grants—either from the federal government or state government—and tax increment financing.¹⁵⁹ While it is certainly worthwhile to canvass the state and federal funding options, as noted above, these are inherently limited.¹⁶⁰ For this reason it may be critical to take advantage of tax increment financing. To do so, applicants will need to show, at a minimum, that after completing the brownfield plan, in this case an urban farm, the taxable value of the eligible property will exceed the initial taxable value of that

157. *Id.* § 125.2554(1)(a).

158. *See, e.g.,* Mogk et al., *supra* note 5, at 1530–35 (describing the many benefits of urban farming).

159. *Supra* Part II.B.3.a.

160. *Supra* text accompanying notes 142–43.

eligible property.¹⁶¹ More specifically, applicants will have to provide “[a]n estimate of the captured taxable value and tax increment revenues for each year of the plan from the eligible property.”¹⁶² In so doing, practitioners should be mindful of what type of urban farm—a non-profit community farm or a for-profit market farm—is proposed as the amount of tax increment revenues may vary based on what the purpose of the farm is.

The Downtown Development Authority has utilized tax increment financing to fund various public improvements in the downtown and they may be able to provide some guidance.¹⁶³ Furthermore, there is growing evidence suggesting that urban farms may increase tax revenues locally by increasing property values and expanding the taxable base. For example, Vicky Been and Ioan Voicu undertook a study to quantify the impact of community gardens¹⁶⁴ on the property values in surrounding neighborhoods.¹⁶⁵ They found that community gardens in New York City “have, on average, significant positive effects on property values,” raising neighboring property values “by as much as 9.4 percentage points within five years of the garden’s opening,” with the greatest increases in property values occurring in impoverished neighborhoods.¹⁶⁶ Specifically, Been and Voicu found that the estimated benefits generated for all properties within the 1,000-foot ring surrounding the average garden totaled \$2 million.¹⁶⁷ Measuring the corresponding tax revenue gains, the estimated “present value of the

161. MICH. COMP. LAWS ANN. § 125.2652(h) (West 2013); *id.* § 125.2657(n)(2).

162. *Id.* § 125.2663(c)(1)(h).

163. The Downtown Development Authority has used tax increment financing for projects such as the riverfront promenade, and for green spaces along Woodward Avenue. It has even been used for lighting the Christmas tree downtown. Art Papapanos, Vice President, Detroit Econ. Growth Corp., Presentation at Council of Development Finance Agencies Michigan Financing Roundtable: Understanding Tax Increment Finance (Mar. 30, 2010).

164. While the Been and Voicu study refers to community gardens, it is unclear whether they are referring exclusively to food-producing gardens or general green spaces. The difference appears to be largely irrelevant, as what was being grown in community gardens was not an instrumental point in the study. It should be noted that food-producing gardens might raise surrounding property values more based on potential profits which could lead to further improvements of the urban farm. *See generally* Voicu & Been, *supra* note 144, at 241 (2008).

165. Been and Voicu developed a difference-in-difference hedonistic regression model based on the following assumptions. First, the hedonic regression model consists of comparing “the sales prices of properties that are within designated distances” from a community garden “to prices of comparable properties that are outside the designated ring, but still located in the same neighborhood.” *Id.* at 248. The difference-in-difference specification involves comparing “the magnitude of this difference before and after the garden is opened,” with the difference-in-difference in property values being the “measure of the impact gardens have on neighborhoods.” *Id.* at 246–56.

166. *Id.* at 277.

167. *Id.* at 276.

gross tax benefit to [New York] City generated by all community gardens over a twenty-year period amount[ed] to about \$503 million.”¹⁶⁸ On a city-wide scale, it was estimated that the present value of the gross tax benefit to New York City generated by all community gardens over a twenty-year period amounts to a net tax benefit of over \$325 million, or \$512,000 per garden.¹⁶⁹ While the BRFA captures tax revenue increases directly from the eligible property,¹⁷⁰ increases to property values in the surrounding neighborhood may help persuade city council members to support a brownfield plan.

Furthermore, converting a previously abandoned property into a productive and profitable urban farm undoubtedly increases the value of that property. While more empirical studies are needed to determine the exact impact of converting vacant land into productive urban farm plots, there is some data supporting this assertion. One study found that various urban farming pilot projects on farms of one acre or less could gross between \$90,000 and \$120,000.¹⁷¹ Notably, the study suggests that tax increment revenues from such production farms could be as much as \$434,700¹⁷² over

168. *Id.* at 277. To calculate the corresponding tax revenue gains, there was a three-step process. First, the “total benefits” were discounted “by a factor of 0.7” because “appraised market values used by [New York City] for tax assessment purposes are, on average, about 70% below sales prices.” *Id.* at 276. Second, “the increase in tax revenues in the first year after garden completion” was estimated “by applying the New York City assessment ratios and tax rates to the discounted increases in property values accrued during that year.” *Id.* Lastly, “total tax revenue gains” were computed “as the present value of the stream of annual tax benefits over a twenty-year period.” *Id.*

169. The net present value assumes that the city invested \$177 million into community gardens through incentive programs during the twenty-year period. *Id.* at 277. It must be noted that Been and Voicu studied the relationship between community gardens and land values exclusively in New York City, which raises some question as to the applicability of the data to other locations. The authors, however, have suggested that their results should be transferrable based on the diversity of the gardens surveyed as well as their finding that garden impacts do not vary remarkably with the amount of open space in the surrounding community. *Id.* at 277–78.

170. MICH. COMP. LAWS ANN. § 125.2652(o) (West 2013).

171. Researchers in Ohio estimate that urban farmers can gross up to \$90,000 per acre if they utilize the right crops and growing techniques. Jim Nichols, *Cleveland's For-Profit Urban Gardens are Growing*, CLEVELAND PLAIN DEALER, July 6, 2009, at A-1, available at http://www.cleveland.com/news/index.ssf/2009/07/clevelands_forprofit_urban_gar.html. In Philadelphia, it is estimated that the urban-market gardener could earn \$120,000 in total revenues; in this scenario, the farmer would net \$60,000 including health insurance. URBAN PARTNERS, FARMING IN PHILADELPHIA: FEASIBILITY ANALYSIS AND NEXT STEPS 7 (2007), available at <http://www.abundantlifefarm.com/pmwiki/uploads/SPINFarming/feasibility.pdf>.

172. The study showed that the tax increment revenue for ten farms in Philadelphia was estimated to be \$144,900 per year. I divided that number by ten to get the expected tax increment revenues for one farm per year and then multiplied it by thirty. Note that this study was conducted to determine the economic feasibility of market farms and may not be applicable to community farms. URBAN PARTNERS, *supra* note 171, at 27 tbl.6.

the thirty-year period authorized for the tax increment capture under the BRFA.¹⁷³

The urban farms described in the above studies are typically described as “market gardens” and are distinguished from community farms because they focus on bringing their harvest to “market” for profit.¹⁷⁴ While Detroit does have market farms that focus on producing food to sell for profit to local retailers,¹⁷⁵ this portion of Detroit’s agriculture network remains relatively undeveloped. A study performed by researchers at Michigan State University has estimated that urban farms in Detroit could grow as much as 76 percent of the vegetables and 42 percent of the fruits currently consumed by Detroiters.¹⁷⁶ It has also been estimated that “locally grown fruits and vegetables in Detroit could generate \$200 million in sales and approximately 5,000 jobs.”¹⁷⁷ Moreover, on a national level, this segment is growing rapidly. A 2008 study by the U.S. Department of Agriculture (USDA) found that locally marketed food grossed \$4.8 billion in 2008, representing a four-fold increase from \$1.2 billion in 2007.¹⁷⁸ The great majority of growth in the local-food industry has occurred in urban centers from small farms with annual gross sales under \$50,000 rather than in rural areas that are typically associated with the farming industry.¹⁷⁹ This suggests that there is substantial opportunity to expand market farming, and to do so by utilizing tax increment financing.

While the opportunity is there, the USDA study asserted that “local food sales are a regional phenomenon” and found policy decisions play an

173. MICH. COMP. LAWS ANN. § 125.2663(22) (West 2013).

174. FOOD SYSTEM REPORT, *supra* note 6, at 23.

175. Brother Nature is one such farm in Detroit. It is about two-thirds of an acre in size and employs three full-time workers and one intern. *Id.* at 25. Rising Pheasant is another market farm. *Id.* at 23.

176. Kathryn J.A. Colasanti & Michael W. Hamm, *Assessing the Local Food Supply Capacity of Detroit, Michigan*, 1 J. AGRIC., FOOD SYSTEMS, & COMMUNITY DEV. 41, 51 (2010).

177. Mogk et al., *supra* note 5, at 1531.

178. SARAH A. LOW & STEPHEN VOGEL, U.S. DEP’T OF AGRIC., ERR-128, DIRECT AND INTERMEDIATED MARKETING OF LOCAL FOODS IN THE UNITED STATES, at 3 (2011). It should be noted that a large portion of this increase is likely due to the USDA adjusting their measurements of local food sales to not only encompass “direct-to-consumer” sales but also “intermediated” market channels including “sales to regional distributors and grocery stores, restaurants, or other retailers.” *Id.* “Intermediated” channels account for “50–66 percent of the value of all local food sales.” *Id.*

179. “[S]mall farms with gross sales under \$50,000 accounted for 81 percent of local food sale farms and were more likely to use direct-to-consumer marketing channels, such as farmers’ markets and roadside stands, exclusively.” *Id.* at 13. According to the 2008 Agricultural Resource Management Survey, over “50 percent of small local food sales farms were found in metro counties and 30 percent in rural counties adjacent to metro counties, while nonlocal food sales from farms were, on average, more equally distributed across metro, adjacent rural, and remote rural counties.” *Id.* at 12.

important role in promoting the viability of local food production and sale.¹⁸⁰ Therefore, in order for the urban farmers of Detroit to keep pace with national trends, the city must continue to support their efforts with appropriate policy decisions, like tax increment funding through the BRFA.¹⁸¹ Community lawyers should emphasize this fact to show that both the “public purpose” and “feasibility” requirements for tax-increment financing are met.

2. Utilizing Financing

After determining the amount of tax increment revenues that will likely be available for a community or market farm, attorneys should next attempt to assess what types of activities are eligible for financing.

First, it is important to recognize that the recent amendments to the BRFA permit a brownfield authority to use tax increment revenues from local taxes for work on properties that have not yet had a brownfield plan approved. The DBRA can utilize tax increment financing for “[b]aseline environmental assessments, due care activities, and additional response activities conducted by or on behalf of the authority related directly to work conducted on prospective eligible properties prior to approval of the brownfield plan.”¹⁸² This is significant, as it offers a way for the applicant to defray the up-front costs inherent in baseline environmental assessments.

Second, it is also important for attorneys to assist the urban agriculture community in identifying what potential costs may be associated with “eligible activities” so that urban farms may use the BRFA to fit their specific needs. Obviously, baseline environmental assessment activities will be one of the most prominent expenses for which the urban agriculture community should seek financing, but there are several others as well. “Due care activities” are defined as response activities identified as part of a brownfield plan that “are necessary to allow the owner or operator of an eligible property in the plan to comply with the requirements of section 20107a of [NREPA].”¹⁸³ To do so, owners and operators of contaminated property must “[u]ndertake measures as are necessary to prevent exacerbation” of the contamination, “[e]xercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances,” and “[t]ake reasonable precautions against the reasonably foreseeable

180. *Id.* at 13.

181. *See id.* at 10 (noting that the West Coast (California, Oregon, and Washington) and Northeast regions have particularly high levels of direct-to-consumer sales); *id.* at 13 (noting that “direct-to-consumer sales were highest in and near urban areas and production likely depended on the availability of labor, tillable land, and the market infrastructure essential for direct-to-consumer sales”).

182. MICH. COMP. LAWS ANN. § 125.2663(16)(a)(i)(B) (West 2013).

183. *Id.* § 125.2652(1).

acts or omissions of a third party.”¹⁸⁴ In considering what due care activities may be appropriate for a community farm, collaboration with that farm would be necessary to determine which activities are needed, and which will qualify. However, some of the common due care activities that may be present are building materials for raised beds,¹⁸⁵ soil importation,¹⁸⁶ walkways,¹⁸⁷ garden fabric,¹⁸⁸ and fencing.¹⁸⁹

Beyond due care activities, properties that were “used or [are] currently used for commercial, industrial, or residential purposes, that [are] in a qualified local governmental unit, [and] that [are] owned or under the control of a land bank fast track authority” may be eligible for an even broader array of eligible activities.¹⁹⁰ Most notably, such properties may receive financing for “[i]nfrastructure improvements that directly benefit eligible property,” “[l]ead and asbestos abatement,” and “[s]ite preparation that is not [a] response activity under section 20101 of [NREPA].”¹⁹¹ The most relevant for the urban agriculture community may be infrastructure improvements, which are defined to include many activities that are more closely related to general property redevelopment than the cleanup of hazardous substances.¹⁹²

For the urban agriculture community, the inclusion of “water storage facilit[ies]”¹⁹³ as an appropriate infrastructure redevelopment is of great importance. Water usage is a common problem for many urban farms across the country. “[M]unicipal water supplies are generally much more expensive than agricultural water supplies and also may be more energy-intensive, as

184. *Id.* § 324.20107a.

185. Raised beds are a common practice at many urban agriculture sites where soil contamination is a concern. They are generally constructed out of wood and filled with imported soil, but they can also be constructed with “synthetic wood, stone, concrete block, brick or naturally rot-resistant woods such as cedar and redwood.” EPA INTERIM GUIDELINES, *supra* note 13, at 13–14.

186. Soil importation is common for sites with contaminated soil. Such soil is typically bought from certified soil sources and is generally used in raised beds. *Id.*

187. Walkways in community gardens with soil contamination concerns generally must have some covering to limit exposure to contaminated soil. Typically, walkways are covered with landscape fabric and a layer of mulch or woodchips. Stones or bricks are also sometimes used. *Id.*

188. Garden fabric is a key method of limiting exposure pathways in community farms concerned with soil contamination. It is used to line the bottom of raised beds as well as to line garden pathways. *Id.*

189. *Id.* at 13. Fences may be essential as a due care activity for a community farm existing on a brownfield in order to comply with NREPA, which establishes an affirmative duty to “[t]ake reasonable precautions against the reasonably foreseeable acts or omissions of a third party.” MICH. COMP. LAWS ANN. § 324.20107a(1)(c) (West 2013).

190. MICH. COMP. LAWS ANN. § 125.2652(n)(iv) (West 2013).

191. *Id.* § 125.2652(n)(iv)(A)–(D).

192. *Id.* § 125.2652(v).

193. *Id.*

municipal water has been treated to drinking water standards.”¹⁹⁴ Thus, many community farms harvest rainwater that would go into storm sewers and instead divert it to a cistern that can then be used as an irrigation source.¹⁹⁵ Ideally, the urban agriculture community should seek to classify these activities as “infrastructure improvements,” which is defined to include “drainage system[s],” “waterline[s],” “water storage facilit[ies],” and “other similar or related . . . improvement[s].”¹⁹⁶ Considering the large need for cheap and efficient irrigation, the urban agriculture community should be looking to the BRFA for financing.

Additionally, the definition of “infrastructure improvements” includes a “structure or improvement . . . designed and dedicated to use by, for the benefit of, or for the protection of the health, welfare, or safety of the public generally.”¹⁹⁷ Similar to the broad definition of “blight” which, as discussed previously, brings an expansive amount of land in Detroit within the definition of “eligible property,”¹⁹⁸ the above language in the definition of “infrastructure improvements” vastly increases the types of activities that may be deemed “eligible activities” under the statute. Given the positive impact that community gardens create in taking an abandoned property and turning it into a property that increases the value of the neighborhood,¹⁹⁹ community farms should be interpreted to “benefit . . . the health, welfare, or safety of the public generally.”²⁰⁰ If the phrase “infrastructure improvements” is interpreted in the broad fashion that its language suggests, farms may be able to classify nearly all activities associated with the creation and operation of urban farms as “eligible.”

3. Choosing the Path of Least Resistance in Applying for Tax Increment Financing

As detailed above, it is possible that a brownfield plan may go through three separate entities—the DBRA, the city council, and the MDEQ or the MSF—all of which must approve the plan by looking at different criteria. Limiting the number of entities that will review the brownfield plan will provide the greatest opportunity for success. Luckily there is reason to believe that this can be done fairly easily.

194. JANETT NOLASCO, PAC. INST., SUSTAINABLE WATER MANAGEMENT FOR URBAN AGRICULTURE: PLANTING JUSTICE, OAKLAND 1, *available at* http://www.pacinst.org/wp-content/uploads/2013/02/sustainable_water_management_for_urban_agriculture3.pdf.

195. *Id.*

196. MICH. COMP. LAWS ANN. § 125.2652(v) (West 2013).

197. *Id.*

198. *Supra* notes 91–100 and accompanying text.

199. *See generally* Voicu & Been, *supra* note 144, at 241.

200. MICH. COMP. LAWS ANN. § 125.2652(v) (West 2013).

In seeking to limit the number of reviewing entities, it is important to consider that only two entities will *always* be required to review a brownfield plan: the DBRA and the city council.²⁰¹ While approval from the MDEQ or the MSF is necessary in instances where school operating taxes are used, that source of funding is not necessary in instances where tax increment revenues are sufficient.²⁰² Therefore, in seeking to limit the number of entities reviewing a brownfield plan and to increase the chances of approval, legal advocates should avoid using school operating taxes whenever possible. In instances where there is no contamination present on the eligible property, expenses may be limited to eligible activities such as baseline environmental assessments. For these brownfield plans, avoidance of utilizing school operating taxes may be financially feasible and advantageous as it will limit the reviewing entities to the DBRA and the city council. Therefore, legal advocates must be aware not only of what tax increment revenues an urban farm project may be eligible for, as well as potential costs, but they must also be aware of what reviewing entities may become involved based on how much tax increment financing is needed for the farm.

B. Policy Alterations

While the BRFA in its current form could be utilized to provide financial incentives to the urban agriculture community, three main policy alterations are needed to ensure the goals of both promoting farmer and food safety, and fostering community-based urban agriculture. First, urban farming should be a valid category of reuse along with the industrial, commercial, and residential categories in Part 201 of NREPA. In order for this to happen, there must be some level of safety standards regarding potential contaminants, as well as an outline of institutional controls that may be used in lieu of complete remediation. Second, while the approval process under the BRFA would likely be amenable to urban farming, small reforms to the process that incorporate the site plan review under the newly passed Detroit urban farming zoning ordinance would provide for greater procedural efficiency. Third, the BRFA should be expanded to allow community farm projects to capture the increase in the property values of the surrounding community.

201. *Id.* § 125.2663(1) (stating that the board may implement a brownfield plan and that each plan shall be approved by the governing body of the municipality).

202. *See id.* § 125.2663(13).

1. Create An Urban Agriculture Land Use Category Under NREPA

First, there must be an adequate use-based risk assessment methodology developed that is similar to what exists for residential, commercial, and industrial land use categories. Such a land use category should specify what cleanup levels are acceptable for a brownfield that is converted to an urban agriculture land use and also specify what institutional controls may be appropriate for various levels of contamination.

With all categories of reuse, the cleanup standard of a brownfield site is “based on risk assessment and exposure scenarios” as well as possible institutional controls.²⁰³ Concerning urban farming, there are two types of exposure scenarios: direct (through physical contact with or inhalation of soil contaminants) and indirect (through consumption of food grown in contaminated soil). For exposure, factors for determining risk include: “length of time spent on the site, types of activities performed on the site, and potential contamination pathways such as inhalation, ingestion, or possible dermal contact with contamination.”²⁰⁴ Urban agriculture would be a new category of reuse with different patterns of direct exposure than industrial, residential or commercial redevelopment, as people would be in closer contact with the soil of the site than in any of the other categories. Urban agriculture would also involve exposure over different time periods, and thus would require new standards.²⁰⁵ Setting a well-defined standard would provide regulatory clarity to urban farmers and ensure the safety of farmers. This should be done in cooperation with community organizations and non-profits throughout the city, which have already developed their own regulations and practices for urban farming on lead-contaminated sites.²⁰⁶

Managing indirect exposure pathways by ensuring food safety is also essential for the effective promotion of urban farms. While some studies have been done regarding plant uptake of lead from soil, additional work needs to be done to better define the relationship between plant uptake and soil contamination.²⁰⁷ Overall, plants “do not readily absorb large amounts of lead.”²⁰⁸ The amount that plants do absorb “depends on the species and

203. EPA INTERIM GUIDELINES, *supra* note 13, at 5.

204. *Id.*

205. *Id.*

206. Typically, the Greening of Detroit will not help promote urban farming on any parcel with lead contamination levels above 400 parts per million based on soil testing conducted by the Greening of Detroit. *See* CLEARCORPS/DETROIT, *supra* note 48.

207. *See* EPA INTERIM GUIDELINES, *supra* note 13, at 16.

208. ARTHUR CRAIGMILL & ALI HARIVANDI, UNIV. OF CAL. AGRIC. & NATURAL RES., HOME GARDENS AND LEAD: WHAT YOU SHOULD KNOW ABOUT GROWING PLANTS IN LEAD-CONTAMINATED SOIL 2 (2010).

variety of plant, the chemical composition of the soil, the amount of lead in the soil, and the soil temperature.”²⁰⁹ Generally, lead is “slow to move within a plant (from roots to leaves), and most of the lead that does enter a plant accumulates in the fine roots and secondarily in the leaves.”²¹⁰ Therefore, root crops such as carrots and beets are the most hazardous vegetables to consume from potentially contaminated gardens.²¹¹ However, “[f]ruits such as tomatoes, peppers, melons, okra, apples and oranges and seeds such as corn, peas, and beans” can generally be grown in lead-contaminated soils and not accumulate significant concentrations of lead.²¹² While uptake may vary, lead concentrations are generally much higher in soil than in plants, which means limiting direct exposure pathways should adequately control indirect exposure pathways.

In controlling exposure pathways, there are two options: risk removal by remediating to background standards or implementing risk-based corrective actions mostly in the form of institutional controls. Risk removal consists of soil remediation or extraction to conditions present at a site prior to contamination.²¹³ Risk-based corrective action, such as institutional control, consists of leaving the contamination in place, but limiting the exposure to the contaminants through various pathways.²¹⁴ Largely because of cost concerns, most policies exhibit a preference for implementing risk-based corrective actions rather than risk removal.²¹⁵ For urban farming, there are potential institutional controls, or “best management practices . . . that can significantly reduce risk from multiple exposure pathways.”²¹⁶

Currently, the Greening of Detroit advises farmers to use best gardening practices to manage health risks for gardens that have a soil testing lead level between 100 and 400 parts per million.²¹⁷ For farms within that range, there are several best gardening practices, both in regards to general maintenance and in garden formation that can limit exposure. Treating the soil with lead-free compost, tilling the soil as deeply as possible, and keeping soil pH levels above 6.5 are all possible mitigation strategies that can be implemented into garden maintenance to limit exposure.²¹⁸ In terms of

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. Andrea Ruiz-Esquide, *The Uniform Environmental Covenants Act – An Environmental Justice Perspective*, 31 *ECOLOGY L.Q.* 1007, 1014–15 (2004).

214. *Id.* at 1016.

215. *Id.*

216. EPA INTERIM GUIDELINES, *supra* note 13, at 5.

217. CLEARCORPS/DETROIT, *supra* note 48. This level is likely based on the EPA-set standard of 400 parts per million for bare soil in play areas, which is set to a level reasonably safe for children. See CRAIGMILL & HARIVANDI, *supra* note 211, at 2.

218. CLEARCORPS/DETROIT, *supra* note 48.

gardening practice, gardeners can wear gloves while gardening, keep layers of mulch around plants to keep soil from splashing onto leaves during rain, wet the soil before working the garden to keep dust down, limit child access to the garden, build raised beds with imported lead-free soil, and lay garden fabric over contaminated soil.²¹⁹ All of these practices are currently in place with the Collaborative, which assists farmers in implementing many of these risk management practices in cases of lead contamination. Similar “best management practices” are also advocated for by the EPA in their interim guidelines.²²⁰

While there may be concerns regarding the enforceability of these risk management practices, this concern is not new.²²¹ Since one of the goals of using urban farming as a way to further expand the applicability of brown-field policies is to increase the reach of the BRFA to community actors who may be less able to ensure compliance, this concern over the enforceability of institutional controls is warranted.²²² Strict monitoring of gardens that have received incentives under the BRFA would be virtually impossible due to their number and decentralized nature. However, there are reasons to believe that the need for monitoring urban farms for compliance with risk management practices will not be as prevalent as with other uses driven by corporate actors.

Unlike corporate redevelopment projects, urban farming is largely community-based. This has two potential benefits for compliance assurance. First, considering that it is the community members who are invested in the project that is to include their labor for their benefit, they will have a greater incentive to ensure compliance because it is not only their neighborhood that the project is benefiting, but also their health that is potentially at risk.²²³

219. *Id.*

220. EPA INTERIM GUIDELINES, *supra* note 13, at 13–14.

221. See generally Robert Hersh & Kris Wernstedt, *Out of Site, Out of Mind: The Problem of Institutional Controls*, RACE POVERTY & ENV'T, Winter 2001, at 15; Catherine A. O'Neill, *No Mud Pies: Risk Avoidance as Risk Regulation*, 31 VT. L. REV. 273, 313 (2007) (stating that evidence suggests “restrictions on the use of contaminated sites and resources are often not implemented, monitored, or enforced”); John Pendergrass, *Institutional Controls in the States: What Is and Can Be Done to Protect Public Health at Brownfields*, 35 CONN. L. REV. 1303, 1312 (2003) (estimating that, over time, institutional controls can be expected to fail at as many as 100 percent of non-national priority list sites that have not achieved unrestricted use standards).

222. Even cities with rather advanced urban agriculture zoning ordinances such as Cleveland are unclear as to enforcement of the ordinance. GOLDSTEIN ET AL., *supra* note 6, at 19–20.

223. Further, many of the problems that may arise from a lack of knowledge regarding potential risks can be mitigated by education programs, which organizations such as the Greening of Detroit already host. FOOD SYSTEM REPORT, *supra* note 6, at 18.

Second, the Collaborative is already positioned as an eager and willing partner to ensure farming viability, safety, and management. Considering that most urban farms are not for-profit ventures, many rely on the assistance of the Garden Resource Program for everything from garden tools to volunteer recruitment and coordination. This form of grassroots organization lends itself very well to cooperative enforcement and is already in place.

Currently, the Garden Resource Program incentivizes gardener cooperation through its neighborhood cluster groups model.²²⁴ In this model, certain regions are designated as a “cluster” with all the farms in that region being included. The “cluster” has a team of leaders, “made up of community residents, who manage the cluster tool bank”—a supply of tools that may be borrowed free of cost—“and help coordinate cluster events, such as shared work days, meetings, and summer tours.”²²⁵ Garden Resource Program members “that participate in their cluster’s activities are eligible to receive additional resources, such as compost, woodchips, soil tests, and volunteers.”²²⁶ If the Garden Resource Program with its organization of cluster groups can manage the exploding network of urban farms, as it is currently doing, with limited municipal support, it is not a large stretch to believe that with financial support they will be able to effectively use this network to ensure that institutional controls are effectively implemented and continually utilized.

As an alternative to the informal compliance incentives described above, the BRFA could be amended to specifically limit financing to community farms owned and managed by non-profit organizations, thus making the operating organization responsible for maintenance and operations and somewhat centralizing control.²²⁷ This would provide for more centralized enforcement of institutional controls for contaminated sites. While this could potentially limit the applicability of the BRFA, it would also likely provide for increased compliance.

224. *Id.*

225. *Id.*

226. *Id.*

227. *See e.g.,* GOLDSTEIN ET AL., *supra* note 6, at 32 (Minneapolis “launched its Community Garden Pilot Program” in 2010, which selected several plots of city land available for long-term leases for community farms. “Groups that qualify for [such] leases were not-for-profit, or groups with not-for-profit sponsors. Groups that are gardening for the first time are eligible for one year leases while more experienced groups may have leases of three or five years. The leases are for a nominal \$1 fee” and require liability insurance.); *id.* at 17 (Chicago has proposed similar amendments to their zoning code, which allow “for urban farming and community gardens on sites owned and managed by public or civic entities, nonprofit organizations, or other community-based organizations. The operating organization would be responsible for maintenance and operations.”).

2. Simplify the Brownfield Plan Approval Process

Other than setting adequate regulations for urban farming as a potential land use, the process under the BRFA should be simplified. This can be done by integrating the BRFA approval process with the site plan review process under the new Detroit urban agriculture zoning ordinance. The recently adopted urban agriculture zoning ordinance created a site plan review process that entails submissions of relevant information regarding the proposed urban farm under section 61-3-128.²²⁸ Under the BRFA, this type of review would generally be undertaken by the brownfield authority through its own application process.²²⁹ The two processes should avoid duplicity, which mostly exists in public notice requirements²³⁰ and approval requirements.²³¹ Considering that the zoning ordinance was specifically designed for urban farming, it is fair to presume that its application procedures are more amenable to urban farming and therefore approval of urban agriculture projects should be governed by the urban agriculture zoning ordinance. However, if an urban farmer were interested in possible funding under the BRFA, the Detroit Brownfield Redevelopment Authority should retain authority to review site plans as they may pertain to funding.²³² The statutory requirements of funding only “eligible activities” would also clearly still apply and should be within the reviewing authority of the DBRA.

3. Expand the BRFA Tax Increment Financing Mechanism

One of the key limitations of the tax increment financing mechanism in the BRFA is that to meet the definition of “eligible property,” there must be “eligible activities” proposed for that parcel or development on a contig-

228. Included in that required submission is an “[e]valuation of existing soil conditions and plans to mitigate soil issues, as necessary, and/or demonstration of how methods of cultivation and crops are protected from possible negative impacts.” DETROIT, MICH., MUN. CODE § 61-3-128(9)(g) (2013).

229. MICH. COMP. LAWS ANN. §§ 125.2651–72 (West 2013); Voicu & Been, *supra* note 144, at 242.

230. MICH. COMP. LAWS ANN. §§ 125.2663(9)–(10) (West 2013) (the BRFA requires the governing body to hold a public hearing on the brownfield plan for an eligible property before approval); DETROIT, MICH., MUN. CODE § 61-12-332 (2013) (the zoning ordinance requires an applicant to submit notice to abutting property owners).

231. See MICH. COMP. LAWS ANN. §§ 125.2561–63 (West 2013); EPA CLEANUP GRANTS, *supra* note 139; cf. DETROIT, MICH., MUN. CODE §§ 61-3-141 to -142 (2013) (the city ordinance approval process is simpler and is completely within the control of specifically designated municipal departments).

232. See MICH. COMP. LAWS ANN. § 125.2663 (West 2013) (a party would have to comply with those provisions that are pertinent to tax increment revenues, such as a brief summary of the eligible activities proposed for the eligible property, a description of the costs intended to be paid for with tax increment revenues, and an estimate of the tax increment revenues for each year of the plan).

uous or adjacent parcel that will increase the “captured taxable value” of the eligible property.²³³ As noted by the Been and Voicu study, community farms can provide an enormous boon to cities and neighborhoods by increasing neighboring property values.²³⁴ However, the BRFA definition of “eligible property” appears to foreclose a Detroit citizen who wishes to start a community farm from being able to capture the value that the farm would provide to the surrounding neighborhood. In order to fully promote urban agriculture as a tool for neighborhood revitalization, the tax increment financing mechanism under the BRFA should be expanded to allow a community farm redevelopment to capture the increased tax revenues from the surrounding parcels of property. This form of tax increment financing is already in place in the Tax Increment Finance Authority Act²³⁵ and, as an alternative to any amendments to the tax increment financing mechanism in the BRFA, lawyers should look to the Tax Increment Finance Authority Act as another possible source of funding for community farms.

CONCLUSION

As urban farming has expanded to address the many issues that impoverished inner-city communities face—from lack of social capital and community disinvestment to a lack of fresh, available food—cities have struggled to encourage those efforts as a cost-effective tool for urban revitalization. Typically, such encouragement has come in the form of removing legal obstacles to impeding urban farming expansion. However, it is becoming increasingly apparent that cities may be able to do more than simply remove obstacles.

While the pairing of urban farming and brownfields policies may seem strange at first, it truly is a natural one. The cities where urban farming has been most prolific are often the cities that have high numbers of brownfields. Moreover, urban farms have a transformative power in the neighborhoods in which they exist. For years, brownfield policies have been creating innovative ways to spur neighborhood redevelopment. The majority of brownfield policies have done this by implementing a process that requires the potential redeveloper to identify the contamination of a site through a baseline environmental assessment, allowing a cleanup based on the future use of the site with the utilization of institutional controls to

233. MICH. COMP. LAWS ANN. § 125.2652(o) (West 2013).

234. See Voicu & Been, *supra* note 144.

235. MICH. COMP. LAWS ANN. § 125.1801(aa) (West 2013) (defining tax increment revenues to include “ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions . . . upon the captured assessed value of real and personal property in the *development area*” (emphasis added)).

limit cleanup costs whenever feasible, and providing ample financial incentives through grant programs and tax increment financing.

Cities such as Detroit are expanding brownfield policies beyond the “contamination” framework. The definition of “eligible property” under the BRFA requires no actual contamination for a property to be eligible for brownfield financing incentives. As such, the BRFA fully embraces brownfield policy as a redevelopment policy. However, the extent of the reach of this policy has yet to be realized. In order to be fully realized, the use of the BRFA should be extended beyond the traditional corporate model so that community organizations may reap the financial incentive benefits in their efforts to improve their neighborhoods. In so doing, the city of Detroit would create a viable and cost-effective redevelopment solution for some of the city’s most distressed neighborhoods while also ensuring the safety and sustainability of urban agriculture.

While city governments should be looking to ensure that urban agriculture is safe while also encouraging it as a tool for urban revitalization, attorneys should be mindful of ways that they may be able to assist the urban agriculture community. The legal community can do this in a number of ways. One of the most important is in crafting a brownfield plan that will be accepted by all the relevant reviewing entities. Lawyers should attempt to think of the BRFA and its list of eligible activities creatively so that urban farmers get the financial assistance they need to build successful community farms.