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New Federal Grant Money Available to Developers

By Michael Skorupka

The United States Environmental Protection Agency (EPA) recently issued guidance designed to assist developers and governmental entities anxious to tap into new federal grant monies. This EPA guidance follows the January 11, 2002, enactment of the federal Small

low-interest revolving loans. Assessment grants provide funding for the site characterization, strategic planning, and related activities that make up the initial stages of a re-development project. Up to \$700,000 is available per project for these activities. The clean-up grants

perspective



Todd Janzen Joins Firm

Todd Janzen has joined Plews Shadley Racher & Braun's Indianapolis office. Todd graduated in 2002 from Indiana University School of Law in Indianapolis, where he was Student Note Editor of the *International and Comparative Law Review*. A law intern with United States Magistrate V. Sue Shields, Todd is a 1995 *summa cum laude* graduate of Bethel College. He studied in Germany for a year and taught school in Anderson for four years. ■

Business Liability Relief and Brownfields Revitalization Act (Brownfields Act). The Brownfields Act authorizes the EPA to spend up to \$250 million per year to directly facilitate the development of certain underutilized and contaminated properties known as Brownfields. (The EPA estimates that \$100 million will be available to make up to 200 grant awards.) The Act also modifies existing law by affording new protections to owners or developers of brownfield sites. Overall, the Brownfields Act provides a tremendous stimulus to an already active real estate re-development market.

The new EPA Brownfield grant money comes in three forms: 1) assessment grants, 2) cleanup grants, and 3)

provide up to \$200,000 that may be used to perform necessary site remediation work. Finally, if additional funding is needed to restore a site, the EPA is authorizing up to \$1,000,000 per site for low-interest loans and related expenditures, portions of which may be forgivable. Within any of these grant categories, certain restrictions and requirements apply, including a government entity's participation in the application process and, at the least, a temporary exercise of control over the site.

The application process for the EPA grants and loans consists of two steps. Step one requires the submission of an Initial Proposal. Here, a regional EPA panel will rank applications based upon



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the projects' anticipated community impacts, the qualifications of the applicants' redevelopment teams and a variety of other factors. Round one Initial Proposals must be mailed by December 16, 2002, with subsequent rounds to follow. The EPA will review the Initial Proposals and invite selected applicants to submit a Final Proposal. During this second step of the application process, the EPA will require applicants to provide more specific game plans for re-developing the target properties. The EPA ambitiously estimates that its entire application review process will take less than six months.

Although the Brownfields Act and the EPA-administered brownfield grants create important revitalization

incentives, these benefits represent only one of the many legal tools available to re-developers. Other tools include state-based investigation and clean-up grants and low-interest loans, governmental covenants not-to-sue, legal actions against responsible parties, and insurance claims. Each of these re-development tools involves its own legal issues while offering its own unique benefits. The full value of these benefits are generally realized only when the particular legal tool, or funding mechanism, is evaluated and utilized as part of a complete strategic plan. Therefore, because of the varied requirements and interrelated legal issues permeating the re-development process, advance

consultation with legal counsel and technical consultants is highly recommended. Then, with a more developed and effective funding strategy in place, re-developers are better equipped to access grant monies and realize increased value from their brownfield projects. 

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