

# INDIGENOUS ISSUES IN BROWNFIELD RE-DEVELOPMENT: A TRIBAL PERSPECTIVE

<sup>1</sup>D.R. Wildcat and <sup>2</sup>W.M. Griswold

<sup>1</sup>*Haskell Environmental Research Studies Center, Haskell Indian Nations University, 155 Indian Avenue, Box 5001, Lawrence, KS 66046; Phone: (785)749-8498; Fax: (785)832-6637.*

<sup>2</sup>*Great Plains/Rocky Mountain Hazardous Substance Research Center, Kansas State University, 101 Ward Hall, Manhattan, KS 66506; Phone: (785)532-6519; Fax: (785)532-5985.*

## ABSTRACT

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Like blighted urban areas, indigenous nations in the U.S. often have abandoned underutilized commercial or industrial properties with potential environmental contamination within the confines of their reservations. Like urban brownfields, often contamination problems are discovered long after the responsible parties have disappeared. Financial incentives, tools, and risk-management techniques have been created in urban settings to help facilitate the redevelopment of brownfield sites. The element of tribal sovereignty and self-determination alone makes reservation settings unique. Coupled with cultural differences and historical relationships, it is clear that reservation environments need to develop approaches to brownfield redevelopment issues differently than those of urban settings. This paper explores the differences in tribal and urban redevelopment philosophies and suggests possible elements of a tribal brownfield redevelopment process.

**Key words:** *brownfields, tribal sovereignty, redevelopment, contamination, reservations*

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## INTRODUCTION

The U.S. EPA's awarding of several brownfield demonstration pilot projects to tribes makes it imperative that all stakeholders understand the critical role tribal governments and their agencies and offices may play in the process. A great deal of attention has been given to brownfield economic redevelopment in urban locations, but little exists discussing some of the unique aspects of brownfield redevelopment processes on mostly rural tribal lands in the United States. A number of key factors vary among tribes, which would shape or inform specific strategies for successful brownfield redevelopment, e.g., reservation size, population density, governmental infrastructure, etc. This discussion highlights a few widely shared features of tribal governments, federal and tribal relations, history, reservation/non-reservation and native/non-native relations that must be acknowledged by private contractors, consultants, and non-tribal government agencies for successful brownfield redevelopment to occur.

## BRIEF HISTORICAL OVERVIEW

The trail of broken treaties and general mistreatment of American Indians by the United States government and general public serves as the backdrop to current disputes about care and proper treatment of American Indian lands. Consequently, it should not be surprising that many American Indian communities and governments often view outsiders with suspicion. There is no need for collective guilt on the part of contemporary non-Indian peoples, but there is a need to respect the fact that pain and distrust produced by this mistreatment runs deeply.

In the twentieth century especially, Indian nations have often been perceived, at worst, as social and geographic wastelands and, at best, as something like Third World countries possessing resources ripe for exploitation and extraction. Since the 1960s, however, American Indian nations have increasingly asserted their sovereignty and voiced their desire for self-determination. The cumulative effect of three early 19th century Supreme Court decisions [ *Johnson v. McIntosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832)] provided the basis for tribes to advocate, through the federal courts, their unique status as nations within a nation and their right to establish what is now commonly referred to as a “nation-to-nation” relationship between the federal government and Indian nations. Consequently, with the support of federal courts, tribes or American Indian nations are establishing their own governmental infrastructures, i.e., institutions, including environmental protection offices, land planning commissions, and natural resource management offices. These tribal initiatives require outside or non-tribal persons and organizations to work within tribally established frameworks to address a range of public policy issues and governmental initiatives, especially brownfield redevelopment. All stakeholders working on brownfield cleanup and redevelopment must recognize the sovereignty of tribal governmental institutions and be willing to work within the processes they have established and/or agreed to.

#### **DIFFERENT EXPECTATIONS AND GOALS**

Like urban areas affected by brownfields, reservations often experience high rates of unemployment. The Turtle Mountain Band of the Chippewa in North Dakota has a 57% unemployment rate; the Comanche Nation of Oklahoma has an unemployment rate of 34%; the Hoopa Valley Tribe of northern California has an unemployment rate of 29.6%; and the White Mountain Apache Tribe of Arizona has an unemployment rate of over 40%. However, a history of exploitation and the trail of broken treaties combined with highly self-conscious efforts for economic self-sufficiency lead tribes to be more likely than many urban communities to expect employment opportunities for tribal members.

Fears about history repeating itself in ways described above also lead tribal communities to often desire much greater opportunity for involvement. The fact that reservation communities are often much less transient than many urban communities leads to a heightened sense of collective history. This collective history and suspicion of “outsiders” often encourages community members to become actively involved in community projects.

Finally, although public health and safety concerns are universal to all human communities, the concern for future generations often leads to a healthy conservatism regarding the measurement of risks. In Iroquois traditions, one is asked to always think of the consequences of actions based on the possible consequences to seven future generations. According to some authorities, Lakota and Dakota traditions describe the concern for seven generations as an awareness of three past generations and three future generations.

As these three points above indicate, tribal histories and cultures often serve to raise expectations for what tribal brownfield redevelopment may accomplish. Consequently, the efficacy of brownfield cleanup and redevelopment plans may be judged by very different standards than what one finds in urban areas. In short, what works in urban brownfield settings may not work in rural reservation settings.

## **BARRIERS TO TRIBAL BROWNFIELD REDEVELOPMENT**

Suspicion may be the greatest obstacle to redevelopment. Awareness of the very possible suspicion and fear that “outsiders,” i.e., government agencies and entrepreneurs, cannot be trusted will serve outsiders well and should indicate to contractors, consultants, and entrepreneurs that aggressive and proactive steps to involve community stakeholders in the process of the brownfield assessment, cleanup, and redevelopment should be pursued.

Liability concerns may also be complicated by tribal concerns about sovereignty. Given the checkerboard character of many reservation holdings (often non-tribal members own land within the political boundaries of tribal reservations), fear of litigation from non-tribal members may often be a consideration. Tribal sovereignty is difficult to exercise when threats of litigation by non-tribal members can work against the full exercise of tribal authority.

Possible fear of discovering unknown contamination, or even worse a failure to recognize that short of a full scientific and systematic approach to site assessment and characterization the extent of contamination may be unknown, must be explicitly addressed by stakeholders involved in the brownfield process. Communication of the scientific processes and findings used in assessment and site characterization must be delivered in clear non-technical terms. Creating unnecessary fear must be avoided; however, it is necessary to convey that cleanups can be expensive, long-term projects. Although just as often, they may be successfully undertaken with a modest expense of time and effort.

Concern over regulatory involvement of state, federal, and other governmental entities must be explicitly addressed and scoped during the initiation phase of brownfield redevelopment. This scoping and agreement about the involvement/cooperation/collaboration should be done early to allay the emergence of trust issues later that threaten brownfield initiatives.

It may be accurate to think of tribal brownfield assessment and redevelopment as having all the problems associated with urban brownfield initiatives, with several of these acquiring heightened significance due to the unique histories and political and legal statuses of American Indian nations in the United States. Recent federal court affirmations of tribal nation sovereignty in many areas of public policy certainly suggest an awareness of this unique aspect of tribal affairs is critical.

## **BASIC COMPONENTS OF BROWNFIELDS REDEVELOPMENT**

### ***Initiation***

Initiation of a tribal brownfield redevelopment project requires 1) identification of stakeholders,

especially individuals and groups who serve as community “gatekeepers;” 2) recognition of the critical role of two bases of power, one formal: the elected tribal council, and one informal or traditional: traditionally respected elders and community leaders; and 3) most importantly, a vision of tribal brownfield redevelopment articulated and shaped by the community.

Identification of stakeholders and especially gatekeepers requires a substantial investment of time to become familiar with a community. Brownfield projects, as most administrators will admit, have a political dimension interwoven with technical and scientific issues addressed. Spending time in a community and building relationships will increase the likelihood that a vision of a brownfield project is not merely imposed on or sold to a community by “experts,” but owned by community members and stakeholders. This is hard work and requires the dedication of personnel to this social and political side of brownfield projects. The ability to build consensus and work through disagreements and controversy is easier to deal with upfront than during or after actual cleanup activities have begun.

Traditional leaders or elders must be encouraged to participate in shaping the vision of tribal brownfield projects. In many cases, this may require scheduling and locating meetings in places that are most accessible to older members of the community; lack of transportation often precludes not just the elderly, but other community members from attending meetings.

As the TC<sup>3</sup> formula suggests (Wildcat, 1998), brownfield redevelopment projects are most likely to be community success stories if technological issues are addressed in the context of community, culture, and communication. The manner in which brownfield redevelopment projects are initiated will often determine the extent to which a vision of brownfield redevelopment is shared and owned by a community. If this is a desired goal, it cannot be accomplished without some investment of resources and hard work at the initiation stage.

### ***Cultural and Community Risk Assessment***

Tribal brownfield redevelopment also involves coordination with tribal cultural resource personnel or authorities and designated Native American Graves and Repatriation (NAGPRA) officials to ensure that no destruction of human burials and cultural resources are disturbed or destroyed during the brownfield redevelopment project. Both federal law and increasingly tribal law and courts offer strict guidelines regarding protection of the above described sites. Every tribal brownfield redevelopment project team should include a native consultant knowledgeable of cultural resource and NAGPRA issues.

Assessment should include incorporation of tribal values. Determination of the kind of technologies, procedures, and, most importantly, outcomes is shaped by values which influence notions of what is appropriate, efficient, and effective. Assessment instruments should be incorporated by tribal values to insure that measurements of risk and other parameters of tribal brownfield redevelopment processes reflect the widely held values of the tribal community.

This highlights again the importance of the initiation phase of brownfield redevelopment. Unless efforts are made to understand a specific tribal community's history and contemporary everyday life and culture, assessment instruments will most likely be adopted which may fail to capture meaningful and important aspects of tribal values and culture.

A positive example of how this value parameter of assessment might be approached is exploration of the potential interface with tribal community wellness or youth programs. If brownfield redevelopment is for the entire community, efforts must be made to involve the entire community.

### ***Transaction and Implementation***

Legal and financial transactions will revolve around the central role of the tribal government and its agencies and officials. Legal transactions will often involve negotiation with a triad of authorities: tribal, local, or state (where tribes and courts have recognized a joint or co-jurisdiction), and federal.

Financial transactions should be approached creatively and explored with tribes to see if financial instruments for redevelopment can be created which offer incentive to entrepreneurs for redevelopment. With some tribes, although not the vast majority, creating some tribal wealth through development of gaming economic activities, and opportunities for innovative public (i.e., tribal) and private financing must be explored. Resources like Haskell Indian Nations University's Center for Tribal Entrepreneurial Studies and the First Nations Development Institute (on the Web at <http://www.firstnations.org>) are available to work on these issues.

Successful implementation requires transactions which address cost control, liability transaction, and investment (Bracker, 1998). However, given the often sad legacy of tribal and federal or, more generally, native and non-native relations, we argue that implementation of tribal brownfield redevelopment, even with the above conditions met, may very well fail unless tangible efforts are made to involve and educate/inform the community throughout the life of the project. Unless new economic development or activities "fit into the vision of what the community wants for itself," then as others have suggested (Bracker, 1998), any other measurement of success will be invalid and more importantly the project itself, especially in a tribal context, will be likely mired in controversy and doomed to failure.

### **A TRIBAL BROWNFIELD REDEVELOPMENT PROCESS MODEL**

A typical model for the brownfield redevelopment process is linear (see Figure 1). The model (see Figure 2) we would suggest and name a tribal brownfield redevelopment process (TBRP), is best understood as holistic. From a practical standpoint, the brownfield process certainly has a beginning and an end. However, unlike the image of the linear model, the image of the circle, or what today might be called the medicine wheel symbol, reminds us that the process is essentially

recursive—ongoing in every part of the process: initiation, evaluation, transaction, and implementation—encouraging of reexamination and revisiting of missed or unrecognized issues requiring attention throughout the TBRP.

In its contribution to SEIS for the South Lawrence Trafficway, Haskell Indian Nations University demonstrated that all things are connected and related (Haskell Indian Nations University, 1994). Integration of history, culture, and environment is not a metaphysical position or abstract philosophical premise, but as all stakeholders working in brownfield projects should recognize—something approaching an ecological fact. As brownfield projects in urban areas are often undertaken as part of larger community building and revitalization activities, it is hoped that this tribal model may in fact be valuable to those working on brownfield projects in urban settings.

At every stage, or according to the TBRP model, in every part of the brownfield process, logical connections between methods and or means and ends requires a recursive and projective calculation or determination of what ought to be done at any point in time. Vine Deloria, Jr. best illustrated this sense of decision making in time and space in an account of traditional Lakota decision making as it was related to him by an elder. In a society where we look at long-range planning as an exercise of looking 10 years into the future or at the outside 25 years, Deloria noted an elder explained the concept of the seven generations as follows (the following is paraphrased):

People think that recognizing the seven generations as one refers to the seventh generation into the future. I was taught to think of the seven generations as those three before me (parent, grandparents, and great-grandparents) and those three that follow me into the future (my children, grandchildren, and great-grandchildren).

When one decides what is the right thing to do, she/he should think of experiences and knowledge held by the previous three generations. What can they teach me? What can the experiences of my great-grandparents teach me? By the same token, one should think of how her/his actions will shape the world we leave for our children, grandchildren, and great-grandchildren. We are all—each of us—in the midst of seven generations. When we act or choose to support this or that decision, our awareness (here and now) should be of those seven generations—what the three before can impart and what the three after might hope to expect.

Other indigenous peoples may have other interpretations of the seven generations, or a differing model of time and the present. The point is, this story illustrates how one feature of a traditional indigenous value/belief can and does influence a model (our TBRP) for how we humans ought to make decisions. We can think of no better illustration of what we mean by a recursive and projective determination of action than the explanation above.

Fortunately places, landscapes, ecosystems, and environments are, for many native peoples, dynamic features of who they are as unique and identifiable peoples (K. Basso, 1996; G. Cajete,

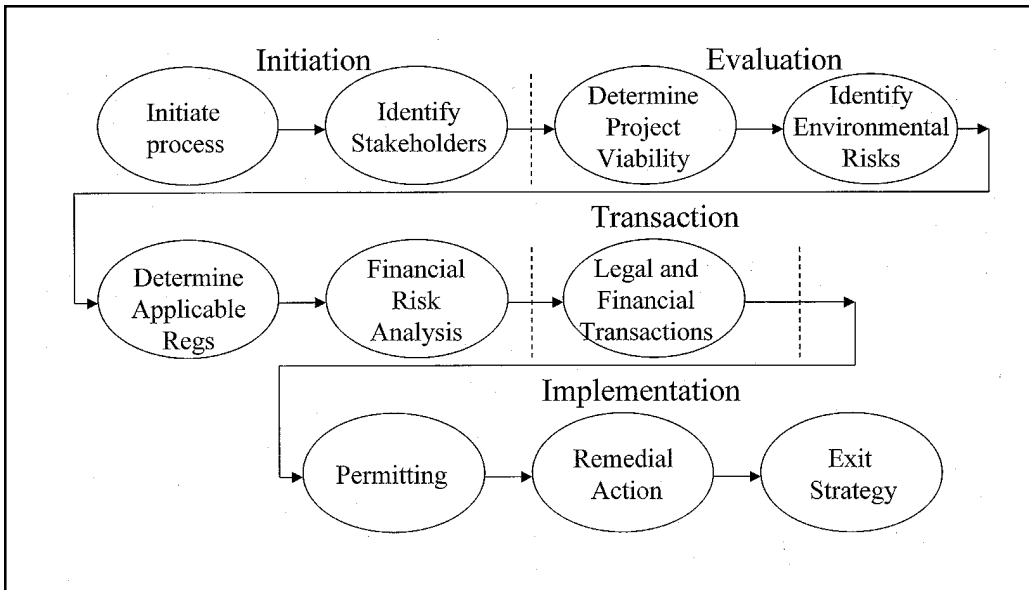
1994; and Deloria, 1994) not only in the past, but the present also. We are not sure the same can be said for communities affected by urban brownfields. Nevertheless, we do believe that approaching brownfield redevelopment using an integrated process perspective may be more successful in all human settings than the linear model often invoked.

## **CONCLUSION**

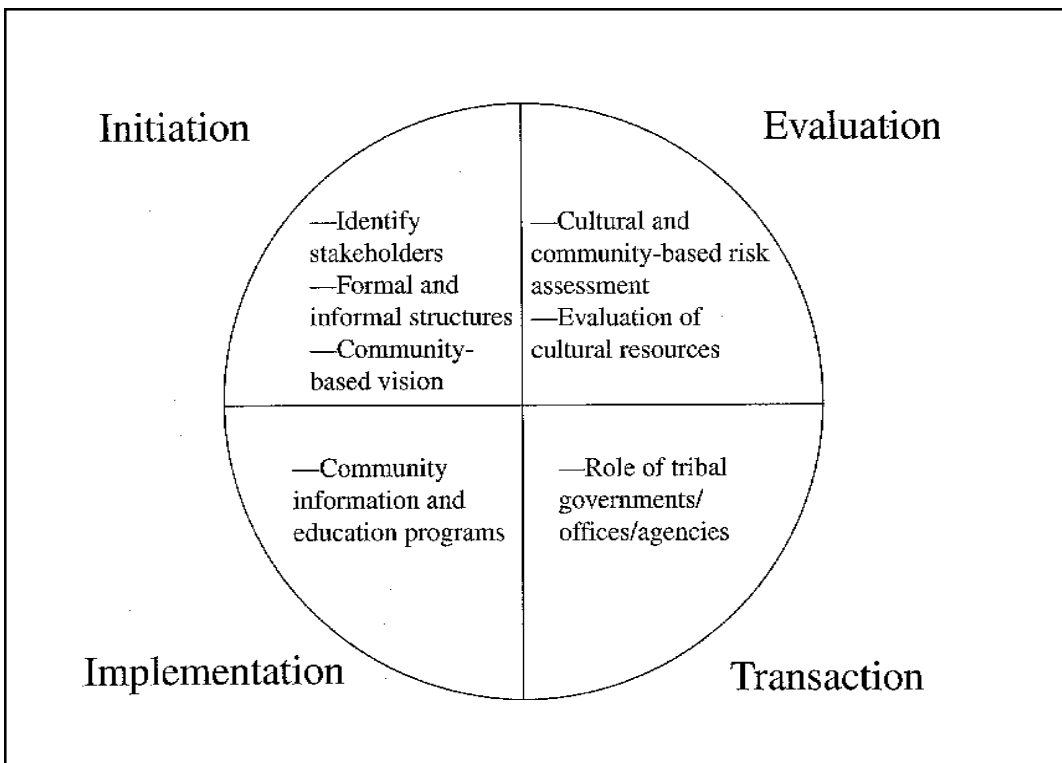
The advantage of the holistic model resides in the fact that connections of all parts of this process are relations, i.e., for purposes of talking about a human process of action, human relations within a community context. Measurements of successful brownfield redevelopment too often get caught up in the other relations, e.g., economic, chemical, biological, geologic, and geographic, approached from an allegedly purely technical perspective that join human relations in the brownfield process. Is it an exaggeration to say that we have spent much more time refining the technologies to deal with the biological and environmental relations (excluding human relations) that affect brownfield projects, than we have the crucial interaction effects of human values and beliefs on places and our efforts to shape environments? We would suggest the holistic TBRP model focuses equal attention on the role of human culture and behavior in designing successful brownfield redevelopment processes. For in the case of many tribal communities and cultural traditions, human beings are not merely understood as living on or in a place, but essentially being of a place. The holistic approach of the TBRP suggests an interdisciplinary team should facilitate brownfield redevelopment: facilitators of community involvement and formulation should be involved in all aspects of a successful brownfield project. The holistic TBRP model recognizes the world as a very complex place—a world where the most complete picture is seldom the result of expert opinions or assessment, but the result of a cooperative synthesis of the different features of a situation community members know from living within a place. Therefore, it is seldom perceptible to outside experts. This recognition may not be universal to all indigenous peoples but it seems so widely shared, it ought not be ignored.

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**Figure 1.** The Brownfields Redevelopment Process.



**Figure 2.** The Tribal Brownfields Redevelopment Process.