



# The Brilliant & Profitable Role of Conservation Easements in Superfund Redevelopment

EPA Superfund Redevelopment

January 28, 2020

# Introduction

Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch

# Webinar Overview

- **Introduction**

- Speaker: Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch

- **What is Superfund Redevelopment?**

- Speaker: Scott Miller, EPA Region 4

- **The Brilliant & Profitable Role of Conservation Easements in Superfund Site Redevelopment**

- Speakers: Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch
- Kat West, Skeo Solutions
- Alex Size, The Trust for Public Land
- Paolo Perrone, The Trust for Public Land

- **Tools, Support & Resources**

- Speaker: Frank Avvisato

- **Q&A and Roundtable Discussion**

# Superfund Redevelopment

Scott Miller, EPA Region 4

# Superfund Redevelopment

Working with communities and other partners in considering future use opportunities and integrating appropriate reuse options into the cleanup process



# Redevelopment Partnerships



Rails-to-Trails Conservancy support at California Gulch Superfund site, Colorado



U.S. Soccer Foundation support at Avtex Fibers Superfund site, Virginia



Academy of Model Aeronautics support at Auburn Road Landfill Superfund site, New Hampshire



The Trust for Public Land support at Pemaco Maywood Superfund site, California



Pollinator Partnership (P2) at Chemical Commodities Inc. Superfund site, Kansas

<https://www.epa.gov/superfund-redevelopment-initiative/redevelopment-partnerships>

# The Brilliant & Profitable Role of Conservation Easements in Superfund Redevelopment

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Kat West, Skeo

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# Universe of Contaminated Properties



**3,700 RCRA  
Corrective Action  
sites**

**40,000+ Superfund  
sites**

**555,000  
Underground Storage  
Tanks**

**450,000 – 1 million  
Brownfields**

**\$2 trillion and 5  
million acres of  
undervalued real  
estate**

**53% of the US  
population lives within 3  
miles of one of these**



# Land Trusts & Conservation Easements

## What is a Land Trust?

A private 501(c)3 non-profit organization formed to protect land within a particular geography.



# Land Trusts & Conservation Easements

- There are over 1,360 land trusts across the USA
- 56 million acres have been preserved by local, state, and national land trust (2015)
- 72% of these lands allow for public access
- \$2.18 billion = endowment amount held by land trusts nationally



## Land Trusts and Conservation Easements

What is a Conservation Easement?

A legal agreement (deed) that restricts certain uses on a property in order to conserve and/or restore particular property attributes



# Benefits of Conservation Easements

- Protect open space, species habitat, water resources, and working lands in perpetuity and can provide community amenities such as recreation, tourism or historic preservation
- Can decrease the landowner's property tax liability
- Can decrease the landowner's income tax liability
- Can provide landowners with a meaningful cash payment at closing





= One Property Right

# Land Trusts and Conservation Easements

## Examples of property rights:

- Mineral rights
- Developments rights
- Water rights
- Access rights
- Air rights

# Land Trusts & Conservation Easements

## Examples of Conservation Easement Restricted Uses

- Certain types of development
- Subdivision
- Timber harvesting, water usage, certain crops, etc.

## Examples of Conservation Easement Permitted Uses

- Agriculture and the development of Ag-related infrastructure
- Ranching
- Timber harvesting



# Land Trusts and Conservation Easements

## Baseline Reports and Conservation Easement Monitoring



# Redevelopment Strategies: Benefits of Conservation Easements



# Benefits of Conservation Easements & Restrictive Covenants



A portion of the Brown's Battery Breaking Superfund site in Hamburg, Pennsylvania is encumbered with a conservation easement, which dictates that sole use of the land area in the southwestern portion of the site shall be for wildlife habitat.

# Benefits of Conservation Easements

**Federal charitable donation tax deduction:** IRS Code section 170(h)(2) a qualified donation allows the donor to deduct up to the fair market value of the donation up to 50% of adjusted gross income for 15 years (farmers can deduct 100%)

**State tax deduction:** A dozen or so states provide some sort of state income tax incentive for the donation or discounted sale of conservation easements

**Property tax reduction:** Reduces specific use of property, and therefore reduces the value of the property. The diminution in value reduces annual property taxes

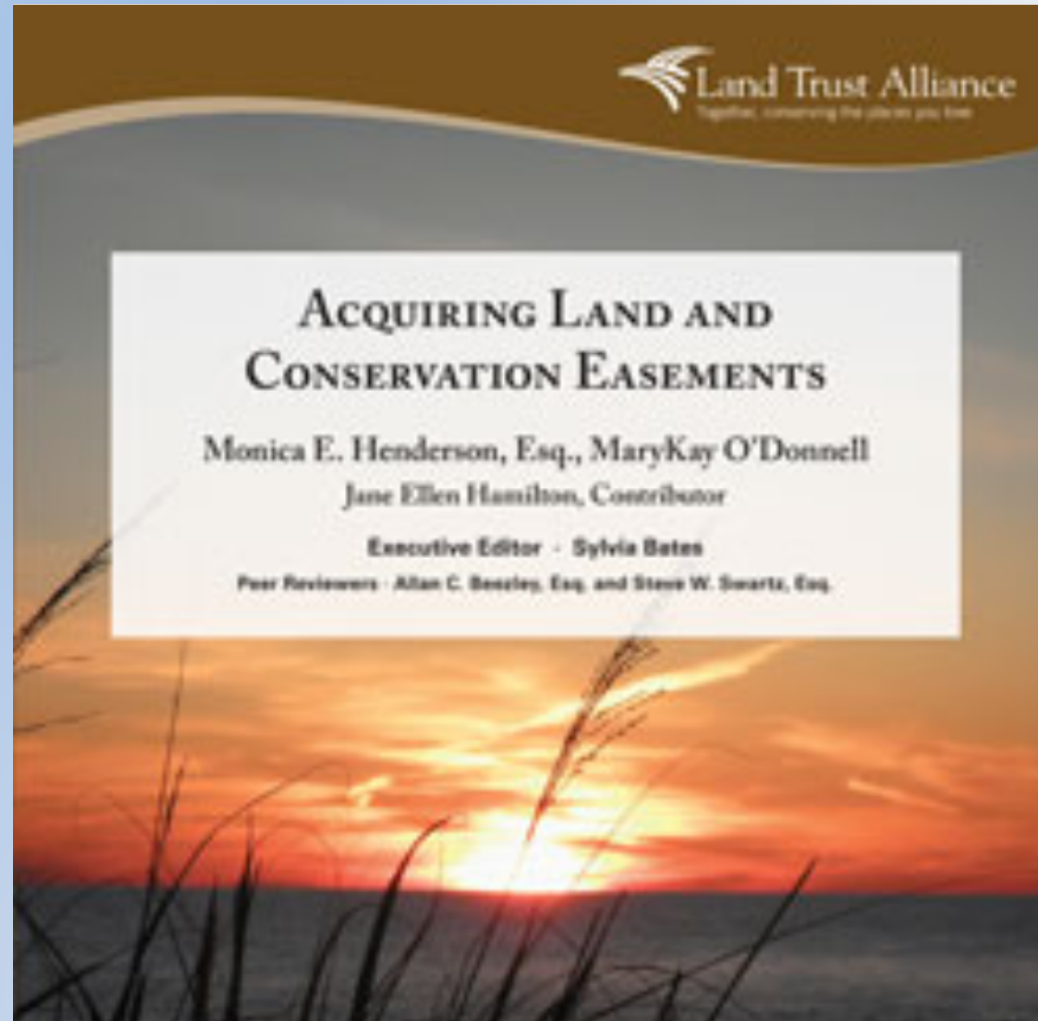
**Estate tax reduction:** IRS Code section 2031(c), provides an estate tax exclusion of up to 40% of the encumbered value of land capped at \$500,000

# Benefits of Conservation Easements



In 2016, Croydon TCE Superfund site - the Heritage Conservancy took ownership of a former industrial property at the site, known locally as Croydon Woods.

# Liability Protection & Managing Risks with Conservation Easements



# Case Studies: Martin-Marietta, Sodyeco, Inc. Superfund Site



# Case Studies: Cornfields



**THE  
TRUST  
FOR  
PUBLIC  
LAND**

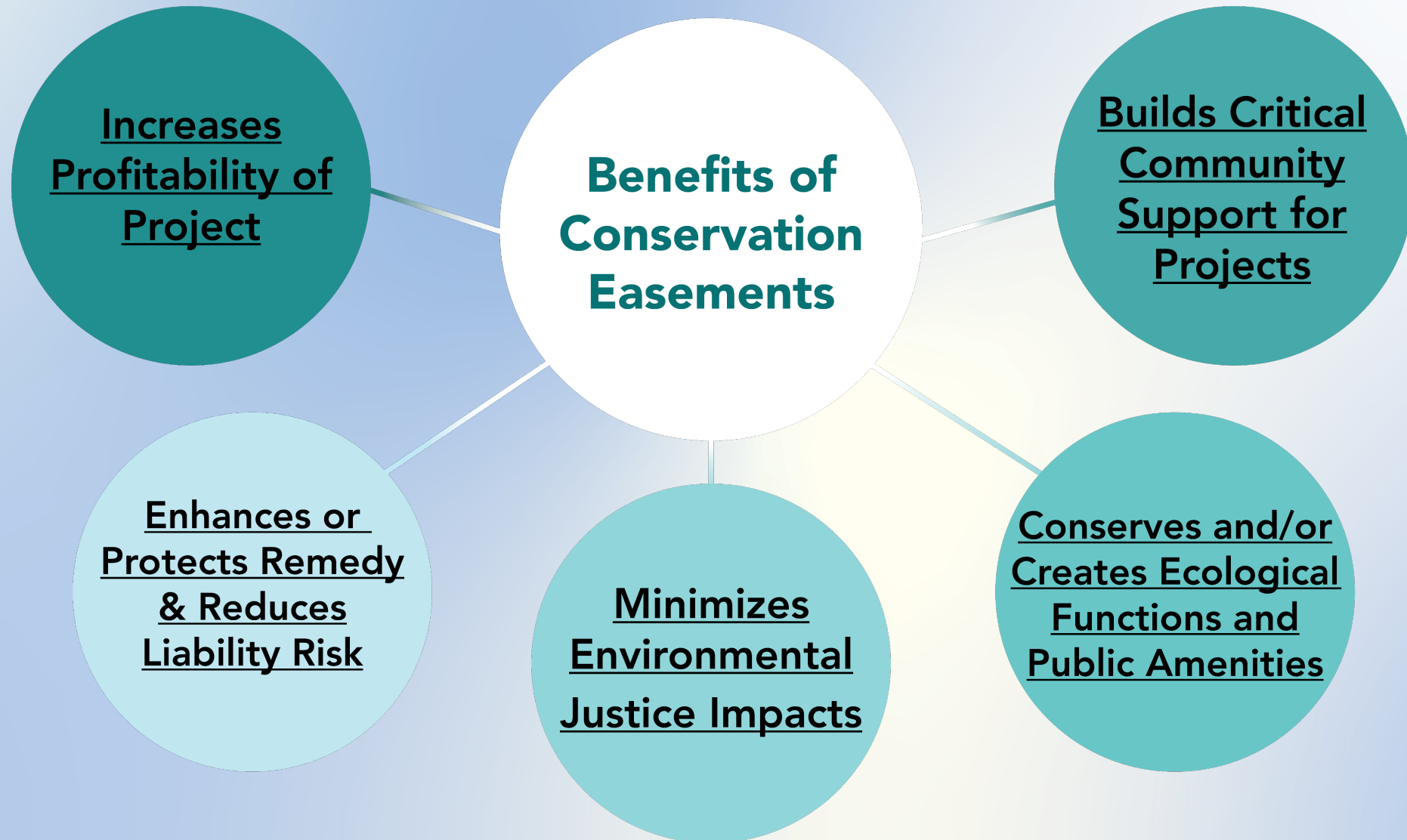


# Cornfields Project



# Take Aways & Lessons Learned

# The Brilliant & Profitable Role of Conservation Easements in Redevelopment of Contaminated Property



# Lessons Learned

- 1) Be a good problem solver** - be willing to think outside the box and meet the needs of partners
- 2) Never underestimate the value of a great story** - maximize the win-wins: community & environmental benefits
- 3) Liability protection is achievable** for easement holders, but must be diligent
- 4) Be a good partner and creative in overcoming challenges:** allay fears of PRPs; identify willing easement holder with capacity; and factor in ongoing maintenance/monitoring costs.

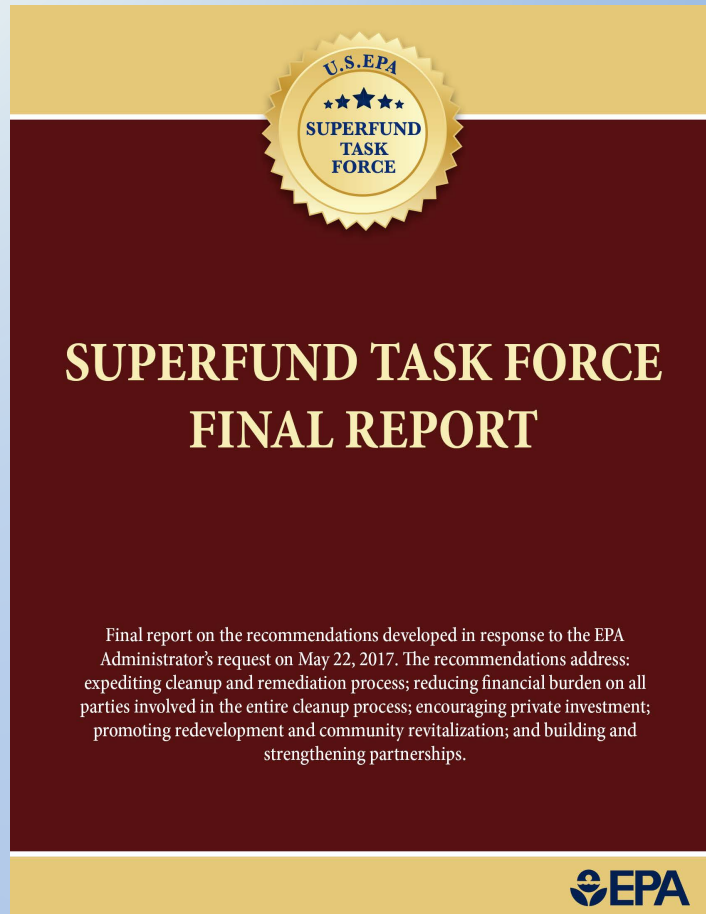
# Tools, Support & Resources

Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch

# Superfund Redevelopment Tools & Support

- Prospective Purchaser Inquiry (PPI) Tool
- “Top 10 Questions to Ask When Buying a Superfund Site”
- Superfund Redevelopment fact sheets
- Comfort Status Letters
- Ready for Reuse (RfR) Determinations
- EPA Guidance & Policies
- 2019 Common Elements Guidance
- 2019 Revitalization Handbook
- Superfund Task Force Report
- BFPP Work or Lien Settlement Agreements
- Prospective Purchaser Agreements (PPAs)
- Reuse Assessments
- Site specific fact sheets & Success Stories/Case Studies
- Regional Superfund Redevelopment Initiative Coordinators

# Superfund Task Force



Link to  
Superfund Task Force Final Report:  
[www.epa.gov/sites/production/files/2019-09/documents/sftfreport\\_v17-9-5\\_for508s.pdf](http://www.epa.gov/sites/production/files/2019-09/documents/sftfreport_v17-9-5_for508s.pdf)

# Regional Superfund Redevelopment Coordinators

[www.epa.gov/superfund-redevelopment-initiative/regional-redevelopment-contacts](http://www.epa.gov/superfund-redevelopment-initiative/regional-redevelopment-contacts)

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[www.epa.gov/superfund-redevelopment-initiative](http://www.epa.gov/superfund-redevelopment-initiative)