

Brownfields and Comprehensive Planning

PUB-RR-679

Fact Sheet 15

April 2009

"Brownfields" are abandoned, idle or underused industrial or commercial facilities, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

Introduction

The 1999-2001 Biennial Budget Bill contained legislation which provides a framework for the development of comprehensive plans by Wisconsin municipalities. This legislation, sometimes referred to as the "Smart Growth" law, became effective on October 27, 1999, with the signing of Wisconsin Act 9.

The Smart Growth law encourages communities to examine their citizens' land use priorities and to plan for consistent land use decisions in addressing future development trends. Under the law, any land use related ordinance, plan or regulation enacted by a municipality after January 1, 2010, must be consistent with that municipality's adopted comprehensive plan, in order to be considered legally defensible.

While every community's land use priorities are unique to its citizens and resources, nearly every community has one or more parcels of industrial or commercial property that are abandoned or underutilized because of concerns about environmental contamination. These properties are known as "brownfields." Cleanup and redevelopment of brownfield properties can play a role in land use planning by making

good use of previously developed land, while minimizing relocation and sprawl into green spaces and undeveloped areas, such as productive farmland.

It is important that communities include brownfields redevelopment in their comprehensive plans. The Smart Growth law requires that, by 2010, any program or action of a local governmental unit (LGU) that affects land use shall be consistent with that local government's comprehensive plan. As a result, a local government that fails to plan may be limited from taking actions to acquire brownfields or apply for grants to clean up properties, if those types of actions were not identified in an approved comprehensive plan.

How brownfields fit into comprehensive planning

Comprehensive plans developed under the Smart Growth law must include nine specific elements (see box on page 2). Brownfields issues are pertinent to several of these nine elements, including the Land Use element, the Implementation element, and particularly the **Economic Development** element. The new law requires that the Economic Development element of any comprehensive plan "**shall also evaluate and promote the use of environmentally contaminated sites for commercial or industrial uses.**"

Cleanup and redevelopment of brownfield properties makes economic sense by returning abandoned properties to the tax



rolls and to productive use, thereby creating jobs. Brownfield redevelopment also makes optimal use of existing infrastructure, such as roads, utilities and railways. In addition, brownfield redevelopment can offer Wisconsin communities the opportunity to change the land use in a formerly industrial neighborhood to accommodate commercial, residential and/or recreational development.

The nine plan “elements” required by the new comprehensive planning law are:

- Issues & opportunities
- Housing
- Transportation
- Utilities & community facilities
- Agricultural, natural & cultural resources
- **Economic development**
- Intergovernmental cooperation
- Land use
- Implementation

Other Natural Resources

In addition to redevelopment of brownfield sites, local governments need to consider other natural resource facets of the Smart Growth law. One of these is groundwater protection. When planning locations for industrial parks and roads, keep in mind that spills occur more often in these areas, and spills can be a source of groundwater contamination. Whenever possible, industrial parks and roads should be located away from areas (i.e. downgradient or sidegradient) where wells are or may be located, in order to help protect current and future groundwater resources.

The Wisconsin Department of Natural Resources’ (DNR) Drinking and Groundwater Program staff can provide more information about wellhead protection

planning. They can be reached at 608-266-0821 and are listed on the web at: dnr.wi.gov/org/water/dwg/.

In addition, spill response staff in the Remediation and Redevelopment Program (listed on page 7) can provide additional information about hazard identification and spill prevention.

The DNR and the University of Wisconsin Extension have also produced “Planning for Natural Resources,” a guide to including natural resource issues in local comprehensive planning. This document addresses everything from wildlife, forests, and parks to water, air and wastes. It provides ideas and references for local planners to use in preparing their plans. This guidebook can be found at your local DNR office or on the web at: dnr.wi.gov/org/es/science/publications/SS_964_2002.pdf.

How to “evaluate and promote” brownfields redevelopment in comprehensive plans

(1) Evaluation

Local planners may wish to begin evaluating their community’s potential for brownfield redevelopment by conducting an inventory on potentially contaminated sites within their geographic area and gathering available information about those properties. Not all potentially contaminated properties are brownfields. However, lists and databases of potentially contaminated properties are a good starting point for an evaluation.

The DNR and other state and federal agencies maintain several valuable on-line resources to help planners gather preliminary information on potentially contaminated properties:

Contaminated Lands Environmental Action Network (CLEAN)

The Contaminated Lands Environmental Action Network (CLEAN) is an inter-linked system of databases that provides information on different contaminated land activities in Wisconsin, to assist with the investigation, cleanup and eventual re-use of those lands. CLEAN can be accessed through the DNR web site at dnr.wi.gov/org/aw/rr/clean.htm. Through CLEAN, there are two main ways to view information about contaminated properties:

1. BRRTS on the Web

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web is a comprehensive site database maintained by the DNR, containing information about all active or closed sites with reported environmental contamination. The user is presented with a search page, where certain criteria (such as location) can be entered. The database then lists sites that fit those criteria, providing links to detailed information on any given site.

Internet access to BRRTS on the Web is available through CLEAN at:
dnr.wi.gov/org/aw/rr/clean.htm.

2. RR Sites Map

RR Sites Map is a web-based mapping system that allows a user to view different layers of contamination data using a Geographic Information System (GIS) tool. This system contains detailed site information, including copies of site maps and test results, which are updated regularly and accessible to the general public.

Internet access to RR Sites Map is available through CLEAN at: dnr.wi.gov/org/aw/rr/clean.htm.

Other On-Line Resources Underground Storage Tank Database

The Department of Commerce (Commerce) maintains a database of all registered current and former storage tanks in Wisconsin. In many cases, these tanks have leaked, resulting in discharges of hazardous substances. Many properties are left abandoned or underused due to concerns about leaking storage tanks. This database is accessible on the Commerce web site at: commerce.wi.gov/php/ERS_Tracker_on_web/ers_tracker_on_web.php.

U.S. Environmental Protection Agency (EPA) Databases

The EPA maintains a number of databases and lists, referencing sites and facilities with EPA regulation or involvement. Many properties in Wisconsin can be identified from these sources.

The EPA's Superfund program maintains a database called the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), containing information about contaminated sites. Sites in this database include highly contaminated sites from the National Priorities List (NPL), as well as many other properties where EPA has taken action. The agency also maintains a list of archived sites that have been taken off CERCLIS and have been designated as sites with "No Further Remedial Action Planned" (NFRAP). Superfund site information is available on the following web site:
epa.gov/superfund/sites/index.htm.

The EPA's Hazardous Waste program also maintains lists of hazardous waste facilities that handle or dispose of hazardous waste. While not all hazardous waste facilities have known or suspected hazardous waste

discharges to the environment, some of these facilities may have circumstances which would qualify them as brownfield properties.

The EPA hazardous waste database, known as RCRAInfo, includes all facilities that generate hazardous waste, as well as those which treat, store, or dispose of hazardous waste. Planners can search this database at the following web site:
epa.gov/enviro/html/rcris/rcris_query_java.html.

EnviroMapper is a Geographic Information System maintained by the EPA which is useful for mapping various types of environmental information on properties, including air releases, drinking water, toxic releases, hazardous wastes, water discharge permits, and Superfund sites. Many sites listed in this system are potential brownfields: epa.gov/enviro/html/em/.

While the above sources can help identify some brownfield properties, there may be other environmentally contaminated properties which would not appear in these databases, because the state or federal government has not been notified. Discussions with local officials and residents and visual surveys can provide clues as to whether properties may be vacant, abandoned, or underutilized. In many cases, local officials may be aware of these properties because of former land use activities, reports of open dumping, fires, and other problem activities that often occur on brownfield properties.

Once potentially contaminated properties are identified, local planners can combine site information with checks of county tax records to determine whether these properties are also tax delinquent. Some brownfield properties may have been

reassessed for property tax purposes due to the environmental pollution on the property.

(2) Promotion

Once brownfield sites are identified and evaluated, communities may next develop implementation strategies for cleanup and redevelopment. State and federal agencies offer many helpful tools, including:

- a. environmental liability exemptions;
- b. financial incentives; and
- c. DNR assurance letters.

The DNR's Remediation and Redevelopment (RR) Program can provide information and assistance on how to effectively apply these tools to local situations.

Access and download the following informational publications through the web, at dnr.wi.gov/org/aw/rr/archives/pub_index.html

a. Environmental Liability Exemptions

In the past, prospective land purchasers and lenders have been reluctant to acquire environmentally contaminated properties because of potential liability for costly cleanups. The Wisconsin statutes provide environmental liability exemptions for:

- **Local Governmental Units (LGUs)** LGUs are eligible for liability protections from some state and federal laws for properties acquired through certain procedures. See *Fact Sheet 7 – Liability Protection for Local Governmental Units and Economic Development Corporations* (publication #RR-579) for more information.
- **Lenders and Representatives** Lending institutions and representatives of estates, trusts, etc. are exempted from

some state and federal laws in most property transaction situations.

See *Fact Sheet 5 – Environmental Liability Exemptions for Lenders and Representatives* (publication #RR-508) for more information.

- **Voluntary Parties**

Parties who conduct voluntary cleanups can apply to receive a transferable Certificate of Completion, which exempts them from much future liability for past releases on the property. See *Fact Sheet 2 – Voluntary Party Remediation and Exemption From Liability* (publication #RR-506) for more information.

b. Financial Incentives

The DNR and other state agencies offer financial incentives for the cleanup and redevelopment of brownfield properties. All of the following programs, and others, are listed in the *Financial Resource Guide for Cleanup and Redevelopment* (publication #RR-539).

Further financial information, including the Guide, can be found on the web at dnr.wi.gov/org/aw/rr/financial/index.htm.

- **Grants and Reimbursement Programs**

The DNR administers the Brownfield Site Assessment Grant (SAG) Program, designed to assist local governmental units in the initial assessment of brownfield properties, including tank removals, abandoned container removals, building demolition and asbestos abatement associated with demolition. The agency also runs the Brownfields Green Space and Public Facilities Grant, which funds cleanup activities for brownfields where the end use has a long-term public benefit, including preservation of green space,

development of recreational areas or use by a local government.

Commerce administers the Wisconsin Brownfields Grant Program, which can assist both municipalities and private parties in funding brownfields cleanup and redevelopment, in addition to initial site assessments. Commerce also administers the Blight Elimination and Brownfields Redevelopment (BEBR) Grant program, which can be used by communities for investigation and cleanup of brownfields.

Some programs, administered by various state agencies, are designed to reimburse parties for cleanup of specific types of contaminants. Some examples are the Petroleum Environmental Cleanup Fund Award program (PECFA), the Dry Cleaners Environmental Repair Program (DERP), and the Agricultural Chemical Cleanup Program.

- **Loans**

The DNR's Land Recycling Loan Program is available for the investigation and cleanup of municipally-owned contaminated properties, including landfills, which affect or threaten to affect groundwater or surface waters. These funds are currently available at a 0 percent interest rate.

- **Tax Incentives**

Under agreement with the DNR, Wisconsin counties and the City of Milwaukee are authorized to cancel all or a portion of delinquent property taxes, interest, and penalties on brownfield properties. Counties are also authorized, under 1999 Wisconsin Act 121, to assign judgments resulting from tax lien foreclosure on brownfield properties.

Most prior liens are thereby erased, clearing title for a new owner interested in redeveloping the property.

Other tax incentives available to municipalities and/or private parties include the Federal Brownfields Tax Incentive, Development Zone Programs, and Environmental Remediation Tax Incremental Financing Districts.

c. DNR Assurance Letters

The DNR offers several types of assurance letters to parties involved with contaminated properties.

Further information about assurance letters can be found on the web at dnr.wi.gov/org/aw/rr/liability/index.htm.

- **General Liability Clarification Letters** clarify liability for site-specific matters related to the contamination and cleanup of a property. See *Fact Sheet 11 – General Liability Clarification Letters* (publication #RR-619) for more information.
- **Off-Site Letters** clarify the liability of property owners, lessees, or prospective purchasers, when contamination is migrating onto a property from an off-site source. See *Fact Sheet 10 – Guidance for Dealing with Properties Affected by Off-Site Contamination* (publication #RR-589) for more information.
- **Lease Letters** clarify lessees' liability for properties with pre-existing contamination. See *Fact Sheet 12 – Lease Letters: Clarifying Environmental Liability When Leasing Property* (publication #RR-620) for more information.

Implementation and Consistency

Comprehensive plans must include an implementation element that describes the specific actions that the local government will take in order to implement its plan. In order to promote brownfields redevelopment, communities may want to take specific actions such as: changing zoning ordinances, acquiring property for redevelopment, developing blight elimination and redevelopment plans, creating Tax Incremental Financing (TIF) districts, or arranging for financial assistance to pay for environmental investigation and cleanup.

Please remember that brownfields and the economic development element make up just one part of a comprehensive plan. There are several programs within DNR working on other aspects of comprehensive planning, such as the land use element. Please see the DNR's land use web site at dnr.wi.gov/org/es/science/landuse/ for more information.

Please see page 7 for DNR contact information.

Regional DNR Contacts

Questions about brownfields should be directed to the Land Recycling Team (LRT) contact in your local DNR regional office. Questions about spill response and prevention should be directed to the regional spills contact. Both contacts are listed below. Please see the map to determine which region contains your property.

NORTHERN REGION (NOR)

LRT: John Sager (715) 365-8959
 Spills: John Sager (715) 365-8959
 Department of Natural Resources
 107 Sutliff Avenue
 Rhinelander, WI 54501

NORTHEAST REGION (NER)

LRT: Annette Weissbach (920) 662-5165
 Spills: Jason Moeller (920) 662-5492
 Department of Natural Resources
 2984 Shawano Ave.
 Green Bay, WI 54307

SOUTH CENTRAL REGION (SCR)

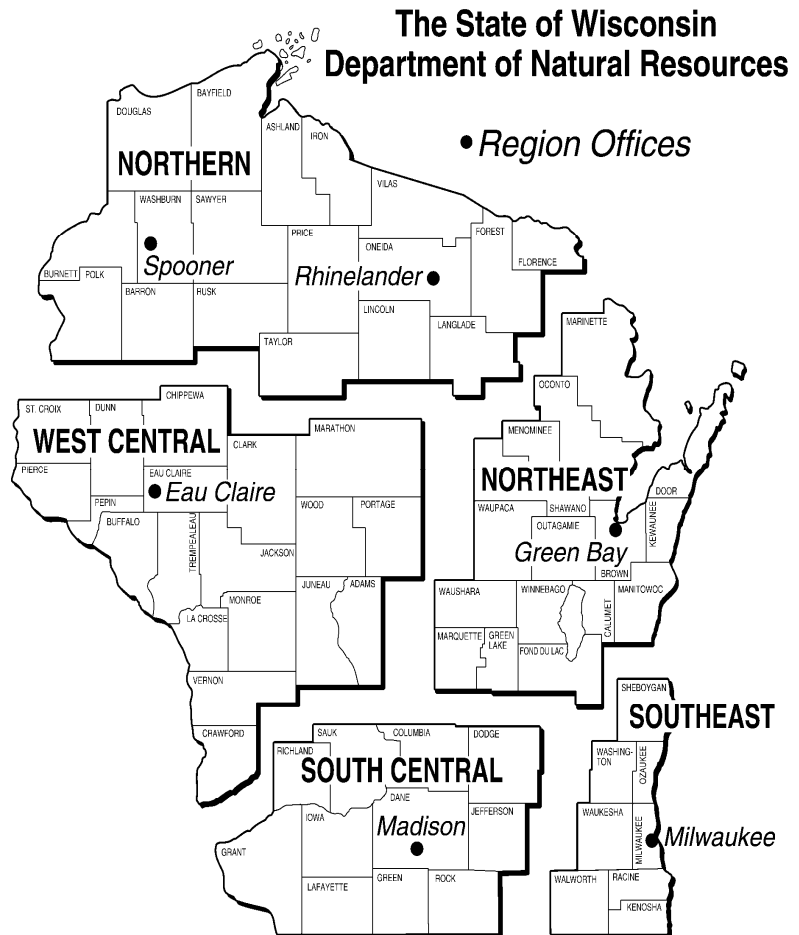
LRT: Linda Hanefeld (608) 275-3310
 Spills: Dino Tsoris (608) 275-3299
 Department of Natural Resources
 3911 Fish Hatchery Road
 Fitchburg, WI 53711

SOUTHEAST REGION (SER)

LRT: Margaret Brunette (414) 263-8557
 Spills: Scott Ferguson (414) 263-8685
 Department of Natural Resources
 2300 North Martin Luther King Drive
 Milwaukee, WI 53212

WEST CENTRAL REGION (WCR)

LRT: Loren Brumberg (715) 839-3770
 Spills: Thomas Kendzierski (715) 839-1604
 Department of Natural Resources
 1300 West Clairemont Avenue
 Eau Claire, WI 54702



This document contains information about certain state statutes and administrative rules but does not necessarily include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240.

This publication is available in alternative format upon request. Please call 608-267-3543 for more information.