



Brownfields and Comprehensive Planning

RR-679

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The Smart Growth Law Brownfields and Comprehensive Planning

The 1999-2001 Biennial Budget Bill included legislation that provides a framework for the development of comprehensive plans by county and local governments in Wisconsin. This legislation, sometimes referred to as the “Smart Growth” law, became effective on October 27, 1999, and is codified in Wis. Stat. § 66.1001.

The comprehensive planning law encourages communities to examine their citizens' land use and community development priorities and to plan for consistent land use decisions to address future development trends. Under the law, changes to zoning, subdivision and official mapping ordinances must be consistent with that municipality's adopted comprehensive plan in order to be considered legally defensible. Redevelopment plans for blight elimination under Section 66.1333 and the formation of tax incremental districts under Section 66.1105 of the Statutes also need to be based on the local comprehensive plan.

Comprehensive plans developed under the Wisconsin law must include nine specific elements:

1. Issues & opportunities
2. Housing
3. Transportation
4. Utilities & community facilities
5. Agricultural, natural & cultural resources
6. Economic development
7. Intergovernmental cooperation
8. Land use
9. Implementation

How Brownfields Fit into Comprehensive Planning

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. Brownfields issues are pertinent to several of the nine required elements of a comprehensive plan, including the Land Use element, the Implementation element and the Economic Development element. For example, the 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 productive use, thereby creating jobs and tax revenue. Brownfield redevelopment also makes optimal use of existing infrastructure, such as roads, utilities and railways. In addition, brownfield redevelopment offers communities an opportunity to change the land use in a formerly industrial neighborhood to accommodate new commercial, residential and/or recreational development.

Evaluating Potential for Brownfield Redevelopment

Local planners may wish to begin evaluating their community's potential for brownfield redevelopment by conducting an inventory of 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 Wisconsin Department of Natural Resources (DNR) and other state and federal agencies maintain several valuable on-line resources to help planners gather preliminary information on potentially contaminated properties:



Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
dnr.wi.gov, search “brownfield”



1. Wisconsin Remediation and Redevelopment Database (WRRD) - WRRD 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. WRRD can be found at: dnr.wi.gov/topic/brownfields/wrrd.html. Through WRRD, there are two main ways to view information about contaminated properties:

- **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. BRRTS does not list sites where contamination is not confirmed. Users can search the database by different criteria and are provided links to detailed information on any given site.
- **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, like site maps and test results, which are updated regularly and accessible to the general public.

2. Underground Storage Tank Database-

The Department of Agriculture, Trade and Consumer Protection (DATCP) 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 at: https://datcp.wi.gov/Pages/Programs_Services/PetroleumHazStorageTanks.aspx.

3. 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/facts/rcrainfo/search.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: <https://www.epa.gov/emefdata/em4ef.home>.

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.

Promoting Reuse of Brownfields through Planning

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

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, such as tax foreclosure, condemnation, for blight removal, and more. [See *State and Federal Liability Protections for Local Government Units \(RR-579\)* 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 *Environmental Liability Exemptions for Lenders and Representatives \(RR-508\)* for more information.](#)
- **Voluntary Parties** Parties that 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 *Voluntary Party Remediation and Exemption from Liability \(RR-506\)* 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 (RR-539)*. Further financial information, including the Guide, can be found on the web at: dnr.wi.gov/topic/brownfields/financial.html

- **Grants, Services and Reimbursement Programs**

The DNR administers the Wisconsin Assessment Monies program, which offers no-cost environmental site assessment services to local governments and private parties under the Contractor Services program. With this program, the DNR contracts directly with environmental consultants to help awardees complete environmental due diligence. The DNR also provides grants to local governments and non-profits under the Ready for Reuse Program, to assist with brownfield cleanup.

The Wisconsin Economic Development Corporation (WEDC) administers the Brownfield Site Assessment Grant (SAG) program, designed to assist local governmental units in the initial assessment of brownfield properties, including environmental assessments, tank removals, abandoned container removals, building demolition and asbestos abatement associated with demolition. WEDC also administers the Brownfields Grant program. This program provides funding to both municipalities and private parties for the investigation and remediation 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 Response Fund (DERF) and the Agricultural Chemical Cleanup Program.

- **Loans**

In addition to grants for local governments, the DNR's Ready for Reuse Program offers zero percent interest loans to local government for remedial action planning and cleanup of brownfields sites.

- **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.

c. DNR Assurance Letters

The DNR offers several types of assurance letters to parties involved with contaminated properties. More information can be found at:

dnr.wi.gov/topic/Brownfields/Liability.html.

- **General Liability Clarification Letters** clarify liability for site-specific matters related to the contamination and cleanup of a property. [See *General Liability Clarification Letters \(RR-619\)* 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 *When Contamination Crosses a Property Line- Rights and Responsibilities of Property Owners Off-Site Limited Liability Exemption \(RR-589\)* for more information.](#)
- **Lease Letters** clarify lessees' liability for properties with pre-existing contamination. [See *Lease Letters: Clarifying Environmental Liability When Leasing Property \(RR-620\)* 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.

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' Drinking Water and Groundwater Program staff can provide more information about wellhead protection planning. Visit dnr.wi.gov/topic/drinkingwater/ for more information.

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts. 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 (large print, Braille, audio tape, etc.) upon request. Please call for more information.