Finding, Purchasing and Redeveloping Brownfields in Kentucky

A Publication of the Kentucky Brownfield Redevelopment Program

Why should I want to redevelop a brownfield?

Brownfields are properties that are abandoned or underutilized due to real or perceived contamination. These include closed factories, old service stations, former dry cleaners, abandoned hospitals and schools and old mine lands. Many developers shy away from these properties due to environmental concerns. However, these properties often have good features worth considering. This is particularly true since Kentucky has recently enacted a new law to increase regulatory certainty for developers.

West Sixth Brewing, in Lexington, Ky., was once home of the Rainbo Bread Company.

Some reasons that brownfields can be good locations:

- Brownfields often have infrastructure (utilities, roads, rail sidings, docks, etc.) remaining from previous operations.
- Resistance from neighbors is less likely for cleanup and redevelopment of brownfields compared to construction on undeveloped fields or woodlands. Zoning issues are also less likely.
- The communities around brownfields may have available workers due to the closing of the previous operations. Local governments may be eager to support new businesses to replace the lost jobs.
- Some of these properties can be quite large. This makes it easier to assemble large tracts of land.
- Environmental issues may limit possible uses of some brownfields. As a result, they may be cheaper than similarly sized greenfields.
- Incentives are often available specifically for brownfields. These can be combined with other incentives to help make these projects successful.
- Older buildings have a charm that is not as easily found in new construction.
- Recycling brownfields is more sustainable than constructing on greenfields. For “green” companies, this is a very public display of their commitment to operate in an environmentally responsible manner.
- For whatever type of development you are planning—a factory, restaurant, housing, distillery—there may be a suitable brownfield waiting.

How do I go about finding a suitable brownfield?

Kentucky has an estimated 8,000 brownfields. There is a Kentucky Brownfield Inventory, but it is not comprehensive. It would be impossible to keep track of thousands of properties as they enter and leave the real estate market. Besides, listing could create a stigma on a property. The inventory lists mostly properties that have received some sort of state or federal assistance. So, if the inventory is such a limited list, how can someone find brownfields?

If you have identified a preferred geographic area, the best source of information is the local officials. They know the brownfields in their communities (including some that are not on state environmental lists) and which properties might be available for sale. They also will know whether or not the area has zoning and if it

Happy Hollow Landfill, in Middlesboro, Ky., an uncontrolled landfill site, has been redeveloped and is now home to a Sleep Inn.

would be suitable for a proposed development. The Kentucky Brownfield Redevelopment Program works with many cities, counties and area development districts and can help put you in touch with the right individuals.

The Kentucky Brownfield Redevelopment Program can also create an ad hoc list of candidates, if you provide some criteria (e.g. preferred geographic area, required acreage, transportation needs, etc.) to narrow the search. We check with Department for Environmental Protection (DEP) staff and local officials to find potential properties that can fit your needs.

If you want to do your own research, the Department for Environmental Protection File Room has a number of resources. They can provide the Kentucky Brownfield Inventory, though it may be of limited value. A more useful list is the State Superfund List. The sites on this list have, or had, environmental concerns. Some have been remediated and are now home to active businesses, but many are currently vacant. Once you have found a potential site, the DEP File Room can also provide copies of DEP records on the property. Directions for requesting information from the DEP File Room can be found at http://eec.ky.gov/Pages/OpenRecords.aspx.

The U.S. Environmental Protection Agency (EPA) has a useful, online resource called “Cleanups in My Community,” http://www2.epa.gov/cleanups/cleanups-my-community. It provides a variety of options to search federal environmental databases. Again, some of these properties have been remediated and now have thriving businesses, but some are vacant brownfields.

Another useful federal resource is “RE-Powering America’s Land,” http://www2.epa.gov/re-powering. This website is designed to assist with siting renewable energy on potentially contaminated lands, landfills and mine sites; however, it can be useful in screening properties for other uses. The website includes a data set with acreages, distances to highways and rail and information on the electrical infrastructure. The website also has files that work with the Google Earth mapping system.

Use care to properly interpret the descriptions of sites found in the EPA or DEP files. The federal Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) database often lists sites as NFRAP – No Further Remedial Action Planned. This refers to no further federal action being planned. The state may still have concerns about the property. Likewise, the state database may list a site as “closed.” This generally means that a particular release has been properly addressed. There may be additional, often unidentified, issues at the property that have not been remediated.

Furthermore, conditions at a site can change over time. For example, illegal dumping may have occurred since the last report. In addition, better knowledge of environmental issues, such as vapor intrusion, may mean that a remedy that was acceptable at the time may now be judged to be inadequate. Therefore, it is important that you have a current All Appropriate Inquiry (or Phase I Environmental Assessment) of the property before you acquire the property. For liability protection, the assessment must have been conducted within one year prior to the date of acquisition, with certain sections of the assessment updated if conducted

more than 180 days prior to the purchase.

Some cities have resources that help developers identify opportunities. Louisville has LEAPS (Louisville Environmental and Property Search), http://leaps.louisvilleky.gov/. Lexington has a Vacant Property Review Commission and Vacant Property List http://www.lexingtonky.gov/index.aspx?page=3389.

The Kentucky Cabinet for Economic Development maintains a list of properties that are prime for redevelopment. However, they also maintain a list of properties that have environmental or other issues that keep the sites off the primary lists. These "diamonds in the rough" can be found at http://www.thinkkentucky.com/edis/Sites/SecSiteList.aspx.

Another approach is to identify facilities that have closed recently or are about to close. These have the advantage that they have not experienced deterioration from long-term abandonment. Two places to look for such sites are the Kentucky Cabinet for Economic Development Facility Closing Reports, http://thinkkentucky.com/KYEDC/BusDirectories.aspx, and the Worker Adjustment and Retraining Notification Act notifications, http://kentuckycareercenter.ky.gov/News.aspx.

Are there any special precautions I should take when acquitting a brownfield?

It is critical that you conduct an All Appropriate Inquiry, also known as a Phase I Environmental Site Assessment, of the property **prior** to acquiring the property. If you fail to do this and contamination is present, you become a Potential Responsible Party. A Phase I is a key step to becoming a Bona Fide Prospective Purchaser, which provides a degree a liability protection. A Phase I is required by some banks if you are seeking a loan for the property. It is also necessary to qualify for some financial incentives. But, the Phase I is only valid if it is conducted **before** acquisition. It may be no more than a year old at the time of acquisition, with some parts being required to be updated if more than 180 days old.

A Phase I environmental site assessment, which should be conducted prior to the purchase of a property, includes site research, such as deed searches, review of Sanborn Fire Insurance Maps and citizen interviews. In simplest terms, it's a book report about a property. It is an important first step in eligibility for brownfield cleanup grants and liability issues.

The Kentucky Brownfield Redevelopment Program offers a limited number of free Targeted Brownfield Assessments each year for local governments and nonprofits, http://dca.ky.gov/brownfields/Pages/tba.aspx. If you are a for-profit, you may be able to partner with an eligible entity to have an assessment done of a property you are considering purchasing.

The Phase I must be done by an Environmental Professional, as defined by the EPA. If you are hiring an Environmental Professional to do an assessment, one place to look for consultants is the *Consultants Directory,* maintained by the Kentucky Pollution Prevention Center, http://kppc.org/resource-library/consultants-directory/. (Inclusion on this list should not be considered an endorsement. Likewise, not being on this list does not indicate that a company is not qualified. Research the consultant as you would when hiring any professional.)

How can I minimize regulatory issues when I purchase properties that have, or may have, environmental contamination present?

Both state and federal law recognize the Bona Fide Prospective Purchaser liability defense. To qualify, the purchaser must meet seven criteria:

- The purchaser must perform "all appropriate inquiries" prior to acquiring the property.
- The purchaser must demonstrate "no affiliation" with a liable party.
- The purchaser must remain in compliance with land use restrictions. They must not impede the effectiveness or integrity of institutional controls.
- The purchaser must take “reasonable steps” with respect to hazardous substances affecting a landowner’s property.
- The purchaser must provide cooperation, assistance and access.
- The purchaser must comply with information requests and administrative subpoenas.
- The purchaser must provide legally required notices.

During the 2012 legislative session, Kentucky lawmakers passed a law to further support and encourage economic redevelopment of brownfields. This law, and the associated regulations, established the Kentucky Brownfield Property Redevelopment and Reuse Program.

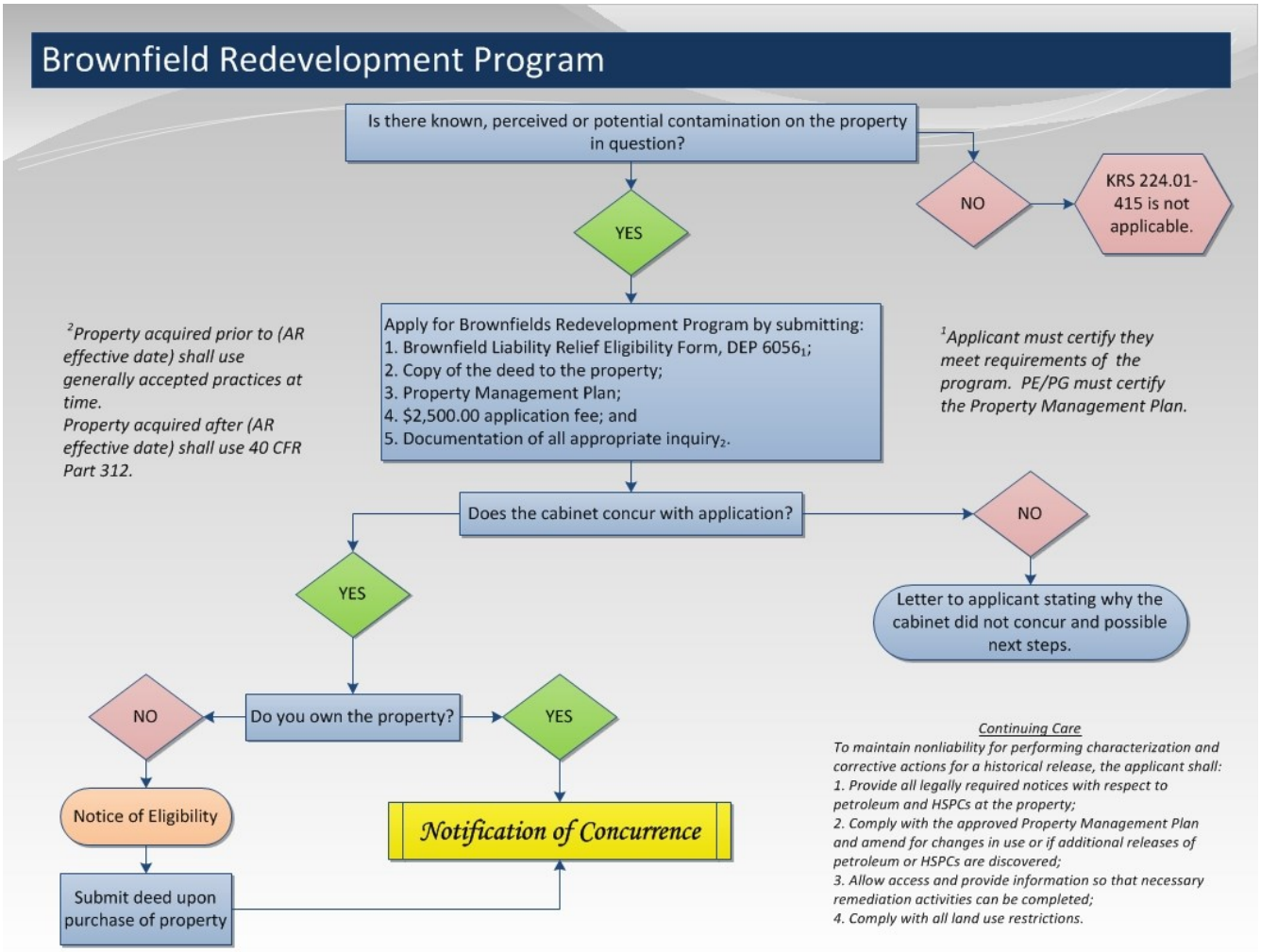
Ruggles Sign Company, in Versailles, Ky., took advantage of new legislation that removes some of the uncertainty of contaminated property cleanup and reuse.

The program provides current and prospective property owners with documentation that they will not be held responsible for conducting site investigation and remediation under Kentucky Superfund laws. To be eligible for this program, applicants must conduct “all appropriate inquiries” prior to purchase, and the applicants must certify that they did not cause a release or have relationships with those who did. In addition, the applicants must develop a plan to reuse the property safely.

This program removes some of the uncertainty related to the purchase and/or redevelopment of brownfield properties for developers and lenders.

- It provides qualifying applicants with a written determination that they will not be required to perform investigation and/or cleanup under the state Superfund statutes.
- It gives qualifying applicants written concurrence that their plan for ongoing care of contamination at the property provides sufficient protection for the planned use.
- It provides a method for the owners to submit a revised property management plan for approval in the case that the use of the property changes.

The following diagram illustrates the program process. Note that prior to purchase, you can obtain a Notice of Eligibility letter. This can provide a degree of assurance to lenders as you seek financing for your project.



What financial incentives are available to assist with the redevelopment?

The Commonwealth of Kentucky offers tax incentives and credits to individuals or businesses that complete a cabinet-approved cleanup on a qualified property. Kentucky also has a Cleaner Commonwealth Fund that offers grants and loans to assist cleanup.

Other assistance is available based on the end-use of the property. The Cabinet for Economic Development offers incentives for companies that relocate or expand in Kentucky. Some electrical utilities offer discounted rates when a firm redevelops a vacant facility. There are other incentives for historic preservation, affordable housing, rural development, renewable energy generation, etc.

Because of the diversity and ever-changing nature of the incentives, it is best to contact the Brownfield Redevelopment Program to discuss the specifics of your project.

Whom should I contact if I have any questions?

Program Website: http://dep.ky.gov/Pages/brownfields.aspx

General questions, assistance finding properties, Targeted Brownfield Assessment Program, grants and incentives

Kentucky Brownfield Redevelopment Program
Division of Compliance Assistance
300 Sower Blvd.
Frankfort, KY 40601

- Herb Petitjean, Brownfield Coordinator, 502-782-6434, herb.petitjean@ky.gov
- Amanda LeFevre, Education and Outreach Coordinator, 502-782-6398, amanda.lefevre@ky.gov

Kentucky Brownfield Property Redevelopment and Reuse Program, sampling protocols, cleanup standards and related technical questions

Superfund Branch
Division of Waste Management
300 Sower Blvd.
Frankfort, KY 40601

- Larry Hughes, Branch Manager, 502-782-6661, larry.hughes@ky.gov
- Jim Kirby, Project Manager, 502-782-6679, jim.kirby@ky.gov

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502-564-0323

envhelp@ky.gov

http://dep.ky.gov/Pages/brownfields.aspx