

## **FACT SHEET: Brownfields**

This fact sheet is intended to provide answers to common questions that landowners, developers, and community residents may have about brownfields. It is intended to provide general information for parties who are interested in redeveloping contaminated properties or brownfields for other uses.

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### **What is a brownfield?**

A brownfield is a vacant or underused property where past actions have resulted in contamination, and the property has a strong potential to be redeveloped for other uses. Most brownfields share the following common traits:

- some degree of environmental contamination;
- contamination is a result of prior use, often due to past commercial or industrial activity;
- the site is currently abandoned, inactive or otherwise underused; and

- the site is often located in urban settings, where existing municipal services and infrastructure (such as roads, water and sewer service) are in place.

## **Is a brownfield different from a contaminated site?**

Brownfields and contaminated sites are not the same but they are often confused as being the same. A contaminated site contains substances at levels above set standards or laws. A brownfield is an underused, often contaminated property, which has a strong potential to be redeveloped for other uses.

## **Where are brownfields located?**

Brownfields may be located in urban or rural communities, but they tend to be more common in urban centres such as cities. It is in urban centres where there is usually a stronger potential to redevelop these sites.

Alberta's brownfields are typically located in cities or towns, and are often associated with former gas stations, drycleaners, rail yards, oil and gas facilities, or other commercial or industrial activities.

## **Do I own a brownfield?**

Is your land affected by environmental contamination? Is the contamination contributing to the land being idle, vacant, or less productive than it ought to be? Is there a realistic potential that the land could be redeveloped for other uses? If you answered yes to these questions, then you might own a brownfield.

## **How does a property owner benefit from redeveloping a brownfield?**

In addition to providing benefits to surrounding communities, property owners that clean up and redevelop their brownfield properties may benefit directly by:

- avoiding potential enforcement actions by the government who could issue orders for cleanup and impose penalties;

- reducing the likelihood that contamination from the property will move off-site, thereby limiting liability for off-site impacts; and
- realizing an enhanced return from the property by making it more valuable and marketable.

## Who can be liable for cleaning up a brownfield or contaminated property?

In Alberta, the law that regulates contaminated lands, including brownfields, is the *Environmental Protection and Enhancement Act (EPEA)*. Alberta Environment is the government department responsible for administering and enforcing *EPEA*.

Alberta Environment most often deals with contaminated land as a “substance release” into the environment which causes an adverse effect. A person responsible for a “substance release” can include:

- the owner and previous owner of a substance;
- any person with charge, management or control of a substance; and
- any person who acts as a principal or agent of those persons mentioned above.

For example, a property owner could be considered a “person responsible” if he or she owned or controlled a substance present on the property that causes an adverse effect. If there is a substance release, Alberta Environment can issue an order to a person responsible to investigate or cleanup the site. Alberta Environment can also issue an “administrative penalty” or ticket to a person responsible.

A less likely option is that Alberta Environment would designate a property as a contaminated site. This has occurred very rarely. If a property is designated as a contaminated site, persons responsible can include:

- the current and previous owners of the site;
- persons responsible for substances present on the site;
- persons considered to have caused or contributed to the presence of substances on the site; and
- a person who acts as the principal and agent of those persons mentioned above.

If a site is designated as a contaminated site, *EPEA* has a broad scope of liability. As noted above, “persons responsible” for a contaminated site can include those that owned or controlled a substance present on the property, and also current and past owners of the site where the contamination is present. However, Alberta Environment does not use these provisions often, only as a last resort.

## **What do I need to know if I am interested in selling a brownfield?**

A seller is required by law to disclose defects on the property that cannot be revealed through a careful inspection of the property by the buyer. These defects are called “latent defects.” Sellers should consult with their real estate agent or a lawyer to determine the scope of information they must disclose to the buyer.

Terms and conditions can be included in the purchase and sale contract to deal with contamination issues. Sellers should seek assistance from their real estate agent or a lawyer to draft terms and conditions to suit their specific situation.

## **What do I need to know if I am interested in buying a brownfield?**

The basic legal rule for buying property is “buyer beware.” This means buyers must satisfy themselves of the condition of a property before agreeing to buy it. The process of making inquiries and other investigations to determine the condition of property is called “due diligence.” For more information on due diligence, please see the Environmental Law Centre’s fact sheet on Protecting Yourself in Land Purchases.

Terms and conditions can be included in the offer to purchase to deal with contamination issues. Buyers should seek assistance from their real estate agent or a lawyer to draft terms and conditions to suit their specific situation.

## **How clean is clean – how do I know if a site has been cleaned up appropriately?**

At the time of writing, there is no generally accepted form or certificate in Alberta that certifies a site as “clean.” In some cases, Alberta Environment issues a “letter of compliance” to landowners that have cleaned up a site to a specified standard for a level of land use (such as residential, commercial or industrial land use). However, these letters are not provided for every property that is cleaned up. These letters are also not recognized under *EPEA* and do not provide protection if cleanup standards change over time. Therefore, if cleanup standards become higher or more demanding, further cleanup may need to be done on the property.

There are searches that can be done to gain further information about the environmental condition of a property. Some information sources are listed in the Environmental Law Centre’s fact sheet on Protecting Yourself in Land Purchases.

## **What if I want to re-zone the site for other uses?**

Brownfield projects often begin when a site’s land use (or zoning) is changed to allow for a land use which will generate higher revenue from the property. For example, a brownfield may be an underused, inner city commercial property that is surrounded by high density, higher value residential buildings. In this case, the owner or developer of the brownfield may wish to change the land use (or re-zone) the property to a residential land use. Re-zoning applications must be approved by the municipality in which the site is located.

A municipality defines its land use categories in its land use bylaw. It is critical that your brownfield project fit within your municipality’s land use categories in order for the project to receive municipal approval. Applying to re-zone a

property means the municipality must amend its land-use bylaw and hold a public hearing. Since land use categories vary from municipality to municipality, it is best to consult with your municipality early on in the project to determine what will be required in order to approve a re-zoning application. You should also inquire early on whether you will require further municipal approvals such as subdivision approvals and development permits.

You should also be aware that changes in land use could dramatically impact the cleanup costs for a brownfield project. This is because cleanup standards for residential land use are often much higher than the cleanup standards for industrial land use.

## **What funding sources are available for brownfield projects?**

In Alberta, there are few public sources of funding available for brownfield projects. Alberta Municipal Affairs offers funding to assist municipalities and owners of small retail gas stations (owners with five or less stations) to clean up underground petroleum storage tanks that were installed before September 1992. Information about this program is available on the Municipal Affairs website at <http://www.municipalaffairs.gov.ab.ca/> or by calling the tank remediation program at 1-866-833-3300 (toll free number).

Cities, such as the City of Edmonton, offer grants for qualifying brownfield redevelopment projects, so you may want to check with the municipality to see if they offer any financial incentive programs.

Most likely, funding for a brownfield project will come from private lenders. Lenders will specify what information they require in order to fund a brownfield project.

## **How do I gain community support for a brownfield project?**

Community support can be one of the most important assets in promoting and redeveloping a brownfield site. Remember that community members have the right to participate in some municipal planning processes, such as re-zoning

applications, so they have the potential to either slow down or derail a project, or to enhance its likelihood of success.

The first step is to identify people who are likely to be impacted, either by existing property conditions, or by cleanup and redevelopment. In addition to municipal staff and community residents, stakeholders may include civic, business, and other community leaders; representatives of financial and real estate development institutions; citizens active in local community development; and elected officials.

Once the stakeholders are identified, it is important to inform these persons early and often of the redevelopment plan. One of the most common sources of distrust is the belief that decisions have already been made, and that the public is being invited to participate as a rubberstamp for the project. The best way to overcome this is to establish a process for community involvement before any decisions have been made, by holding meetings and listening to community concerns.

## **Where can I get more information?**

For general information on brownfields and redeveloping brownfields, contact the Environmental Law Centre. For information about local community efforts to redevelop brownfields, contact your municipality. Further resources are included below.

### Environmental Law Centre Library Resources and Online Catalogue:

Abdel-Aziz, Ahab & Nathalie Chalifour, eds., *The Canadian Brownfields Manual*, looseleaf (Markham: LexisNexis Canada Inc., 2004).

Environmental Law Centre. *A Review of Regulatory Approaches to Contaminated Land Management* (Edmonton: Alberta Environment, 2004).

Hierlmeier, Jodie. *Brownfield Redevelopment in Alberta: Analysis and Recommended Reforms* (Edmonton: Environmental Law Centre (Alberta) Society, 2006).

National Round Table on the Environment and the Economy. *Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada* (Ottawa: National Round Table on the Environment and the Economy, 2003).

## Online Articles:

Hudson, Andrew. "Brownfield development" (1999) 14:1 *Environmental Law Centre News Brief* 11, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=633>>.

Kwasniak, Arlene. "Banks say: you're clean? Show us the certificate!" (1999) 14:2 *Environmental Law Centre News Brief* 12, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=635>>.

Hudson, Andrew. "Talking to your neighbours" (2000) 15:3 *Environmental Law Centre News Brief* 11, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=685>>.

## Additional Online Resources:

*about*REMEDIATION.com, online: <<http://www.aboutremediation.com>> - this is a private/public website that provides information on government policies, effective remediation products and services, and successful management strategies on brownfield redevelopment and site remediation.

Canadian Brownfields Network, online: <<http://www.canadianbrownfieldsnetwork.ca/>> - this website provides access to online newsletters that provide updates on government



programs and legislation. The site also provides information on upcoming events, conferences and workshops on brownfield issues.

City of Edmonton, online: <<http://www.edmonton.ca/brownfield>> - this website provides information about the City of Edmonton's brownfield redevelopment grant pilot program.

Ontario Ministry of Municipal Affairs and Housing, online: <<http://www.brownfields.ontario.ca>> - this website provides information on Ontario's brownfields legislation, as well as information on land use planning and financing for brownfield projects in Ontario.

## **A word of caution about your use of this material**

The information provided in this fact sheet is current to July 31, 2006. While every effort has been made to ensure the accuracy and timeliness of the information, the information provided is of a general nature and is not a substitute for legal advice. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this document.

## **The Environmental Law Centre**

The Environmental Law Centre (Alberta) Society is a registered charitable organization that was incorporated in 1982 to provide Albertans with an objective source of information on environmental and natural resources law. The Centre, which is staffed by four full-time lawyers, a librarian and a small support staff, provides services in environmental law education, assistance, research and law reform. The Centre maintains an extensive library and online catalogue of environmental law materials that is accessible by the public free of charge.

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