

LAW WEEK

COLORADO

States, Feds Offer Incentives For Brownfields

By **Rebecca Almon**

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IF YOU'VE EVER passed a prime corner location and thought "Why hasn't that property been developed yet?" Keep reading.

Unfortunately, that excitement all too often fades to disappointment when you realize the lot is vacant because the prior business was a gas station, or a dry cleaner, or any other red flag reading "potential costly remediation." Alas, there is hope.

Property owners and developers should take notice of several advancements in the environmental arena that could provide economic advantages to redeveloping that good corner. In fact, there are many options including sustainable redevelopment and opportunities to obtain funding to maximize earth-friendly redevelopment.

Sustainable redevelopment involves revitalizing areas that have been, or are perceived to have been, tainted by prior industry or development, such as "brownfields." A brownfield is a property where redevelopment or reuse is complicated by the presence or perceived presence of a hazardous substance, making the reuse or redevelopment of the property problematic from an economic or public health perspective.

Examples of brownfield sites include former industrial sites, gas stations, dry cleaners, junkyards and landfills. Federal and state brownfields programs illustrate and promote the concept of sustainable redevelopment and offer incentives to improve the environment and revitalize Colorado communities by limiting blight.

Colorado has implemented several programs to help cleanup and reinvest in brownfields for the economic or recreational benefit of the community.

Federal and state programs

Through programs such as revolving loan fund grants and cleanup grants, the U.S. Environmental Protection Agency has partnered with states and cities to transform brownfields into private redevelopment, parks and green space.



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In Denver, for example, the EPA gave a \$200,000 grant to Parkhill Community, Inc., which also raised more than \$6.8 million from other federal and local grants and loans and used the proceeds to remediate contamination from a site that was previously used as a brickyard.

Remediation included excavating 40,000 cubic yards of landfill materials, removing three 3,000-4,000-gallon underground storage tanks and one 500 gallon waste oil underground storage tank. As a result of the remediation, private developers have built and opened the Park Hill Family Medical Clinic and the Dahlia Square Senior Apartments complex on the site.

Additionally, the Colorado Department of Public Health and Environment has implemented brownfields programs to assist public entities, nonprofits and private property owners in facilitating cleanups as well as providing relief from regulatory enforcement.

For example, the Colorado Brownfields Revolving Loan Fund Coalition, which received a Brownfields Cleanup Revolving Loan Fund grant from the federal government in 1999, has distributed aid to numerous Colorado cities to transform and

revitalize former brownfields.

The city of Englewood has utilized a combination of federal and state grants and loans to redevelop a former landfill into what is now part of Centennial Park. The city of Aurora utilized funds to redevelop another former landfill into affordable housing and what is now Kingsborough Park.

These localities have leveraged the resources of federal and state governments to develop and improve sites that were previously economically unfeasible to develop. Property owners and developers should be aware of two new exciting funding opportunities — the Colorado Brownfield Contaminated Land Income Tax Credit and the Petroleum Cleanup and Redevelopment Fund.

Colorado tax credit

On May 15, Gov. John Hickenlooper signed into law the Brownfield Contaminated Land Income Tax Credit to re-authorize a credit in effect between 2000 and 2010, for taxpayers who conduct environmental remediation on property proposed for redevelopment or capital improvements.

The law, which became effective Aug. 6, allows taxpayers to claim an income-tax credit for a portion of environmental remediation costs. It also allows counties, cities, towns, home rule cities and private, tax-exempt nonprofit entities, which are not taxpayers, to offset certain environmental remediation costs by transferring all or a portion of the tax credit to a taxpayer, who may then claim it.

Eligible properties must be located within Colorado and be issued a certificate by CDPHE approving the qualified entity's voluntary cleanup plan for the site. The tax credit amount cannot exceed 40 percent of the first \$750,000 expended on the project and 30 percent of the next \$750,000 expended on the project.

There is a cap on the tax credit at \$1.5 million. A qualified entity may transfer a prorated portion of the expense amount to multiple transferees. This tax credit may be the tipping point for taxpayers considering

whether to invest in certain projects involving environmental remediation.

Petroleum Cleanup and Redevelopment Fund

Thanks to a newly created fund through Colorado's Division of Oil and Public Safety, eligible property owners looking to develop a site where a petroleum underground storage tank exists, or once existed, can now apply for reimbursement from the Petroleum Cleanup and Redevelopment Fund. Essentially, property owners may receive reimbursement for costs associated with certain activities.

This includes up to \$2,000 for a petroleum underground storage tank removal, up to \$20,000 with a 10 percent deductible for a site assessment to determine if contamination from petroleum storage tanks is present, up to \$30,000 with a 10 percent deductible for a site characterization if petroleum is discovered on the property, and/or up to \$500,000 for the cleanup of such contamination with a 50 percent deductible.

The application process is simple. To be eligible to participate, the property owner must demonstrate that the historical use of the property included petroleum storage tanks, the site is not eligible to the Petroleum Storage Tank Fund, and the applicant must demonstrate that the site will be redeveloped or reused. An advisory committee will review and approve applications.

The advisory committee focuses on whether the applicant demonstrates a plan that will reduce environmental risks, the financial means to meet the deductibles and the planned redevelopment generates a positive economic and/or social impact on the community. This fund could prove to be a tremendous resource for property owners and investors looking to redevelop former gas station or other petroleum storage sites, to go green. •

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