



Brownfield Update for Guelph & District
Home Builder's Association

May 31, 2011

Presentation Overview

This presentation will discuss:

- New Environmental Protection Act Regulations:
 - O. Reg 153/04, as amended
 - Further amendments
- Brownfield Incentive Trends
- Appendix - Resources

The Challenge of Brownfields



- **Brownfields** are lands that may have been contaminated from past use and are currently abandoned or underutilized.
- Usually, but not exclusively, former industrial or commercial properties that may be underutilized, derelict, or vacant.
- **Key Challenge**
 - Encourage the revitalization of brownfield properties and surrounding communities while protecting health and the environment

Why do Brownfields Matter?

Brownfield redevelopment brings significant benefits...

- Environmental:
 - Reduce threats to drinking water sources
 - Reduce environmental and human health risks
 - Reduce greenhouse gas emissions
- Economic:
 - Can increase the local tax base
 - More efficient use of existing infrastructure and services
 - Generates significant new economic investment
 - Creates value and transforms a "negative energy field" into a magnet for economic activity
- Social:
 - Acts as a catalyst for community revitalization
 - Breathes new life into a community

Environmental Protection Act

Several factors drove the development of the recent Regulatory Amendments:

- Perceived need for greater integrity and reliability of Environmental Site Assessments and Records of Site Condition
- Standards tables insufficiently flexible to address some common site conditions
- Some contaminant values based on outdated science
- Risk Assessment a time-consuming “one size fits all” process

Consultations on Regulatory Amendments

Extensive consultations were undertaken and amendments reflect stakeholder and First Nations concerns.

Consultation and engagement activities included:

- EBR Posting of Proposed Soil and Groundwater Standards (March 2007 – 60 days)
- EBR Posting (Oct. 2008 – Feb. 2009), 87 submissions received
- 20 face-to-face information sessions
- First Nations Information Sessions – January 2009, November 2009
- Working groups for modified generic (Tier 2) risk assessment and environmental site assessment
- Desktop Demonstration Pilots to test proposed changes in specific sites
- Brownfield Stakeholder Group discussions

Amendments to O. Reg 153/04 - Overview

The amendments affect 4 main areas:

1. New phase I and phase II Environmental Site Assessment (ESA) and Record of Site Condition (RSC) procedures – *result in more transparency and integrity.*
2. New streamlined (tier 2) risk assessment – *timelier and more cost-effective alternative to meeting generic standards.*
3. Updated soil and groundwater standards – *to reflect advances in science, approximately 120 chemicals were updated.*
4. Transition

Enhanced ESA and RSC Integrity

New Clear Rules for Phase One and Two ESAs

- Consistent quality of RSCs filed on the Registry
- Property owners and QPs will have an improved understanding of the level of effort required to clean up a brownfield site
- 18-month “stale-date” ensures information is current and reliable
- Levels the playing field for property owners and QPs

New RSC Submission and Filing Process

- More predictable and transparent process for RSC submissions
- All checks and reviews of RSCs are completed by MOE before RSCs are filed
- MOE notifies QP’s and applicants within 30 days of outcomes of review
- More certainty for property owners, developers and QPs on the ministry’s process
- Improved rules to avoid QP Conflict of Interest

Potential Municipal Impacts

Changes to Environmental Site Assessment (ESA) Rules

- Increased consistency in contents and quality of ESA reports
- Increased reliability of ESA reports
- ESA reports cost may increase



- **Record of Site Condition (RSC) process**
 - MOE review of RSC's prior to filing increases confidence in RSC integrity
 - Clear and transparent RSC submission process clarifying what work must be done to submit a RSC and timeline

New Standards

The new standards:

- Reflect current science
- Provide a flexible approach to standards by: providing 4 new generic tables for simple application (Tables 6 to 9 for shallow soils and for sites within 30 m of a water body)
- Increased coverage: standards provided for 6 additional Contaminants of Concern
- Provide a new standard model as a basis for modified generic (Tier 2) risk assessment submissions

Potential Municipal Impacts-3

Standards changes make Ontario competitive with other leading jurisdictions:

- Revised standards for 120 chemicals in total, to reflect current science and strengthen protection of human health and the environment.

Increased standards in areas reliant on wells for potable water directly result from Ontario Drinking Water Quality Standard requirements



Modified Generic Risk Assessment

Streamlined alternative to meeting generic standards or Tier 3 risk assessment process:

- Site specific standards can be developed using the “approved model” (aka Tier 2 or MGRA model) using site specific data rather than the generic assumptions which underlie the Ontario-wide generic standards
- Like other RA-derived standards, these are as protective of public health and the environment as the generic standards.
- 6 risk mitigation measures current approved for use
- Regulation contains an 8-week timeframe for MOE review, no Environmental Bill of Rights posting required

Potential Municipal Impacts-2



Implementation of new Tier 2 Risk Assessment Model:

- Allows for development of site specific standards removing conservatism of generic standards, while retaining protection of health and the environment.
- 8-week regulated timeline to MOE decision
- May affect site selection by developers to address Tier 2-eligible sites first
- May affect preferred building designs and siting to utilize Tier 2
 - e.g. underground parking garages
- May lead to more brownfields redeveloped under risk assessment model

Note: Tier 2 is not applicable to sites in potable water zones (i.e. wells for human or animal use) or adjacent to surface waterbodies.

Transition

RSCs must be filed using 2004 standards until July 1, 2011.

In general, RSCs must be filed using 2009 standards as of July 1, 2011.

- An 18 month extension for use of 2004 standards can be given for sites where work is already underway. This extension must have been requested between July 1, 2010 and Dec 31, 2010.
- 282 extension requests were received by MOE by Dec. 31, 2010

As has always been the case, owners may choose to meet values lower than the current (2004) standards

- Until the new standards come into force (July 1, 2011) they can choose to meet the lower (more stringent) of the two numbers for all contaminants of concern, or any other number that is lower than the current (2004) standards
- The resulting RSC will be filed against 2004 standards, but the maximum measured concentrations for all COCs will also be recorded on the RSC.

Further Regulatory Amendments

A number of important issues have been identified by stakeholders and ministry staff since the initial amendments were filed, including:

1. **Standards** - make improvements (e.g. sodium and PHC background standards) and correct errors
2. **Approved Model** - correct errors and alignment with regulation
3. **Wells** - clarify intent of the policy in relation to non-potable situations
4. **PCA List** - clarify intent of the policy related to potentially contaminating activities (PCA) list
5. **No soil on property** - clarify requirements where no soil remains following excavation or remediation
6. **Arenas** - apply appropriate standards and better align with similar occupancies

These regulatory amendments were filed May 26, 2011, and will come into effect on July 1, 2011 in keeping with the other amendments to O. Reg 153/04.

Guidance and Qs and As will also be used to clarify some of these issues.

Brownfield Regulations - Implementation

Next steps on implementation of the regulatory amendments include:

Preparation of Guidance:

- The Ministry is preparing a series of Guidance documents, Technical Bulletins, Fact Sheets and FAQs.
- Guidance Document Review Reference Group

Delivery of Education and Outreach: On track for July 1, 2011

- The ministry, with the assistance of MAH, has held and attended several sessions targeting key organizations and sectors including Ministry staff, Qualified Persons, Site Developers, lenders; and municipalities and other governmental agencies.
- These sessions are on-going and will continue through July 1, 2011.
- MMAH and MOE worked with OCETA to deliver brownfield workshops across Ontario in early 2011.

Why Incentives for Brownfields?

Constraints:

- Cost - Site remediation is expensive and time-consuming
- Complexity - Sites are typically infill projects
- Financing - Difficulty finding up-front financing

Opportunities:

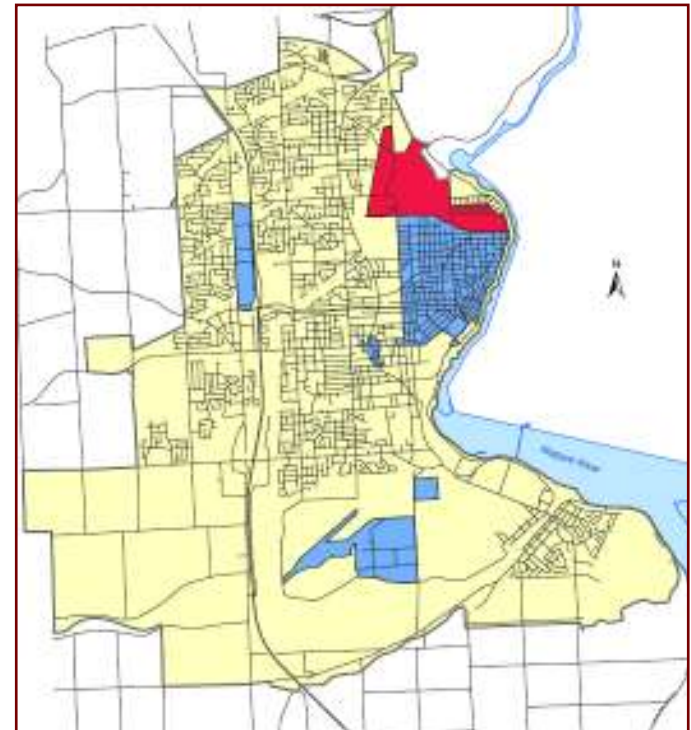
- Increased tax revenues
- Improved community structure and servicing
- Enhanced environmental conditions

Legislative Framework for Incentives

- In Ontario, the fundamental conceptual framework is that of “municipal empowerment”.
 - Municipalities are mature and responsible elected governments, and are best suited to discern which tools apply best in local conditions.
- Incentives are provided under four main pieces of Ontario legislation:
 - The Municipal Act (sections 106 and 365.1)
 - The City of Toronto Act (sections 82 and 333)
 - The Planning Act (sections 28 and 69)
 - The Development Charges Act (section 5.1.10)

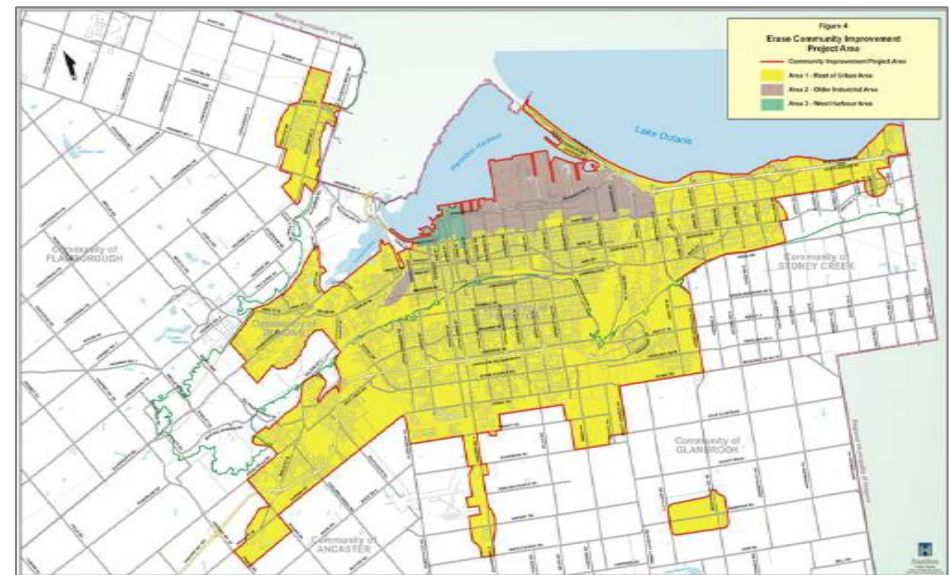
Community Improvement Plans

- Allow for strategic policy planning on a site-specific or area-wide basis:
 - Existing built-up area
 - Former industrial area
 - Downtown / mainstreet.
- Assist with implementing municipal priorities and planning policies (e.g. economic development, downtown revitalization).
- Allow for incentive-based programs to stimulate private sector investment (e.g. remediation of brownfields, façade and main streetscape improvements).



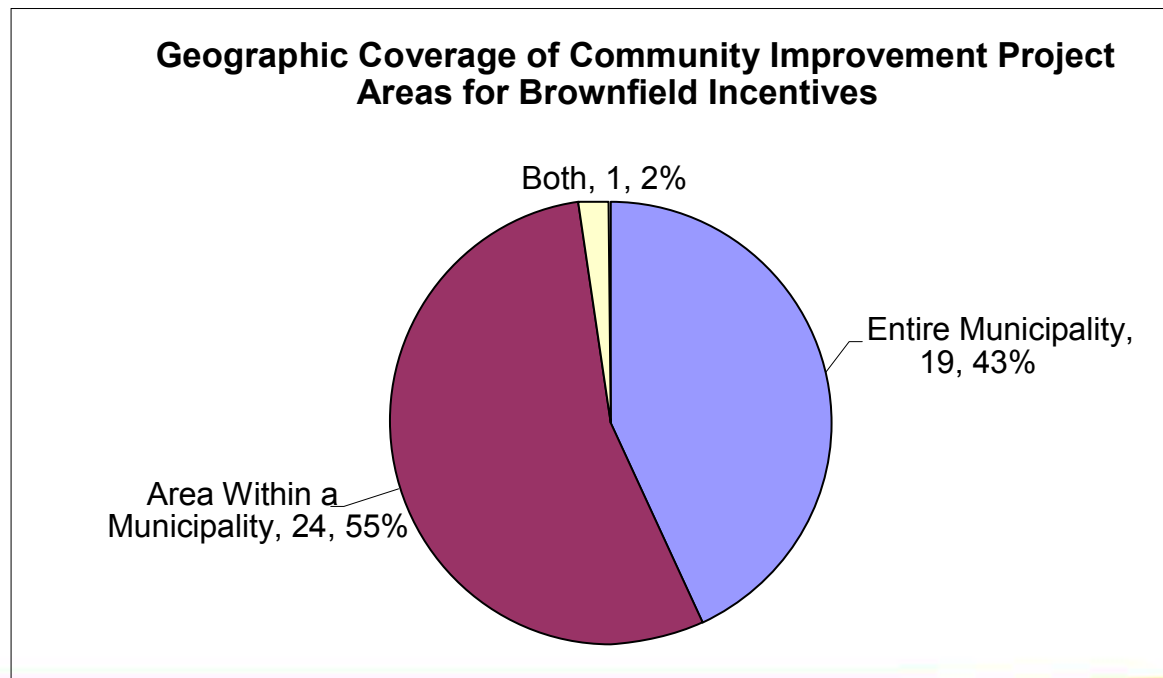
Community Improvement Project Area

- Municipalities may define the geographic extent of a CIP.
- Wide variations are observed:
 - Entire municipality:
 - Specified uses (Toronto)
 - Contaminated properties (Windsor)
 - Sub-municipal regions
 - Downtowns/old industrial areas (Hamilton)
 - Specific sites



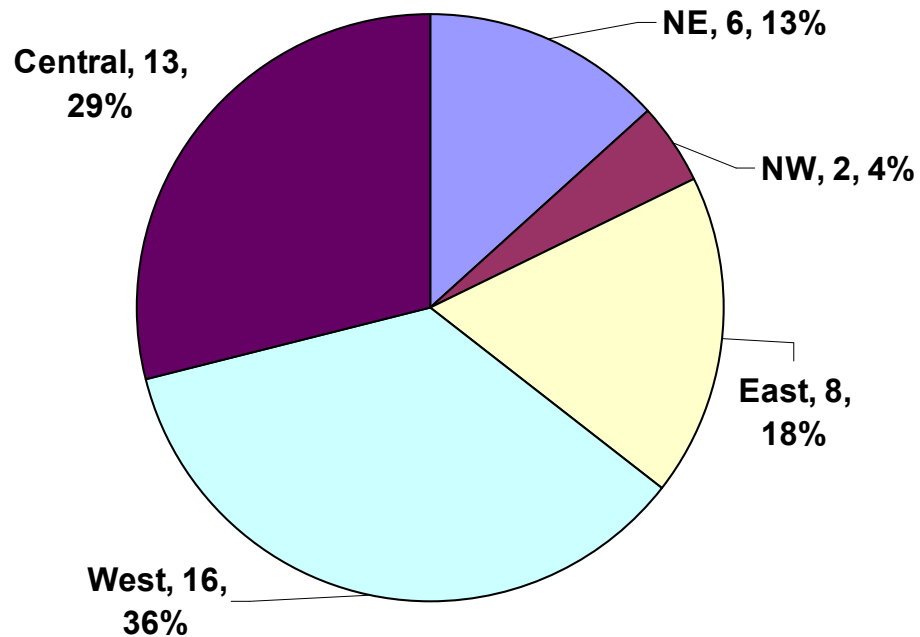
Area Covered by CIP

- Roughly 50-50 split between those which apply CIP to a specific area, versus entire municipality.
- Only Toronto operates on both scales.



Municipal Incentives - Geography

Distribution of Municipal Brownfield CIPs by MMAH Regions



- CIPs largely, but not exclusively, found in southern Ontario.
- Most municipalities with CIPs tend to be those with a significant industrial history.
- CIP usage varies widely by municipal size.

What Kinds of Incentives are Offered?

- Section 28 of the Planning Act allows a very broad range, but usual measures include:
 - Tax Assistance
 - Cancel or reduce municipal and/or school property taxes for a period of time or until remediation paid for
 - Tax Increment Equivalent Grant (nomenclature variable)
 - Municipality repays landowner a portion of increase in property assessment until remediation paid for
 - Environmental Study Grants or Loans
 - Assists with a proportion of costs of Phase 1, 2 ESA's, and/or Risk Assessment
- Other Fee Reductions (s.69, Planning Act)
 - Reduce or eliminate fees for Planning and Building Permit applications (s.69, Planning Act), Landfill Tipping Fees, etc.

Incentive Type Distribution

- Significant variation in the use of particular incentives across Ontario.
 - TIEGs and Tax Assistance (365.1) the main tools.
 - Brownfield remediation loans quite unusual.

<u>Type of Financial Incentive</u>	<u># of Municipalities</u>	<u>% of All Municipalities with "Brownfields CIPs" (44)</u>
Tax Increment Equivalent Grant	41	93%
Tax Assistance	34	77%
Study Grant Program	26	59%
Development Charges Reductions/Exemptions	24	55%
Fees Grant Program	21	48%
Façade Grant or Loan Program	15	34%
Rehabilitation and Redevelopment Grants/Loans	4	9%

Table 1: Number of Ontario municipalities offering various brownfield financial incentive programs within the context of Community Improvement Plans as of October, 2010.

Upper Tier vs Single/Lower Tier

- CIPs primarily designed for use by single tier (Toronto) or lower tier (St. Catharines) municipalities.
- Upper Tier municipalities (e.g. Regions) can only have CIPs for specific purposes:
 - Infrastructure that is within the upper tier municipality's jurisdiction
 - Land and buildings within and adjacent to existing or planned transportation corridors that have the potential to provide a focus for higher density, mixed-use development and redevelopment
 - Affordable housing.
- Only the Region of Waterloo has a regional CIP.
- BUT upper and lower tier municipalities can participate in each other's programs if appropriate Official Plan policies are in place (e.g. Niagara Region).

Development Charge Exemptions

- 55% of Brownfield CIP Municipalities also provide some form of development charge exemption, often implemented via a rebate
- Development Charges Act (sec 5.1.10) allows municipalities to give full or partial exemption for certain areas or classes of property.
- Implementation of this tool requires extensive consideration and analysis in Development Charge Study.
- A preferred incentive by development sector because grant typically occurs when building permit issued, though some municipalities stage payback over period of years
- DCA exemptions are NOT part of the CIP suite of powers, though municipalities often cite them in CIPs for ease of reference.

Other Aspects of Municipal Incentives

- Sustainability Policies:
 - Meeting LEED Standards and/or planning objectives (eg Smart Growth principles in Niagara) augments incentives
- Funding other programs
 - Portion of grant stream withheld to fund related programs and supports (eg Kingston and Niagara Region)
- Assignment
 - Securitization of grant stream
- Sale of Property
 - Present-value of grants or continuation of flow to original owner
- Tax Sale Policy
 - Failed tax sales give opportunities to sell at discount or vest brownfield properties
- Other Incentives may also be applicable
 - i.e Downtown CIP (for renovations or façade improvement)
 - Heritage CIP

Non-Financial “Incentives”

- Financial Incentives matter; but so do non-financial factors:
 - Clear, Reliable, and Early Information on Process
 - Meetings, “Developer Binders”
 - Brownfield ‘Champions’ to drive process
 - Elected officials and senior municipal staff
 - “Fast-Track” teams
 - One table for all departments affected – avoid silos
 - Preparation
 - Proactively template documentation and process
 - Partnership
 - Keep focus on shared goals
 - Leadership
 - Investments in remediation of municipally-owned sites

Key Issues in Incentive Program Design

- **Practicality**
 - Program design should reflect brownfield sector realities; emphasize simplicity, consistency, and prompt processing
- **Timing**
 - Earlier provision is more productive, but increases risk
- **Quantity**
 - Program design should offset a significant component of remediation cost
- **Phasing**
 - Development often occurs in phases. Incentive programs should accommodate this.
- **Synergy**
 - Brownfield policy and incentives should be linked to other municipal priorities such as economic development, intensification, preservation of heritage buildings, infrastructure improvements etc.
- **Quantify**
 - The better the incentive can be quantified by the developer the more value it has to them

Developer Approaches

- Successful process requires developers to think ahead:
 - Meet early, meet often
 - Developing relationships reduces friction
 - Share
 - Information is the best antidote for anxiety
 - Be Flexible
 - Build contingencies into plans, if possible

Conclusion

- Municipal brownfield incentives –
“Something ventured, something gained”
 - Do nothing – virtually guarantees no gain
 - Provide Incentives – eventually realize significant gains

Contacts

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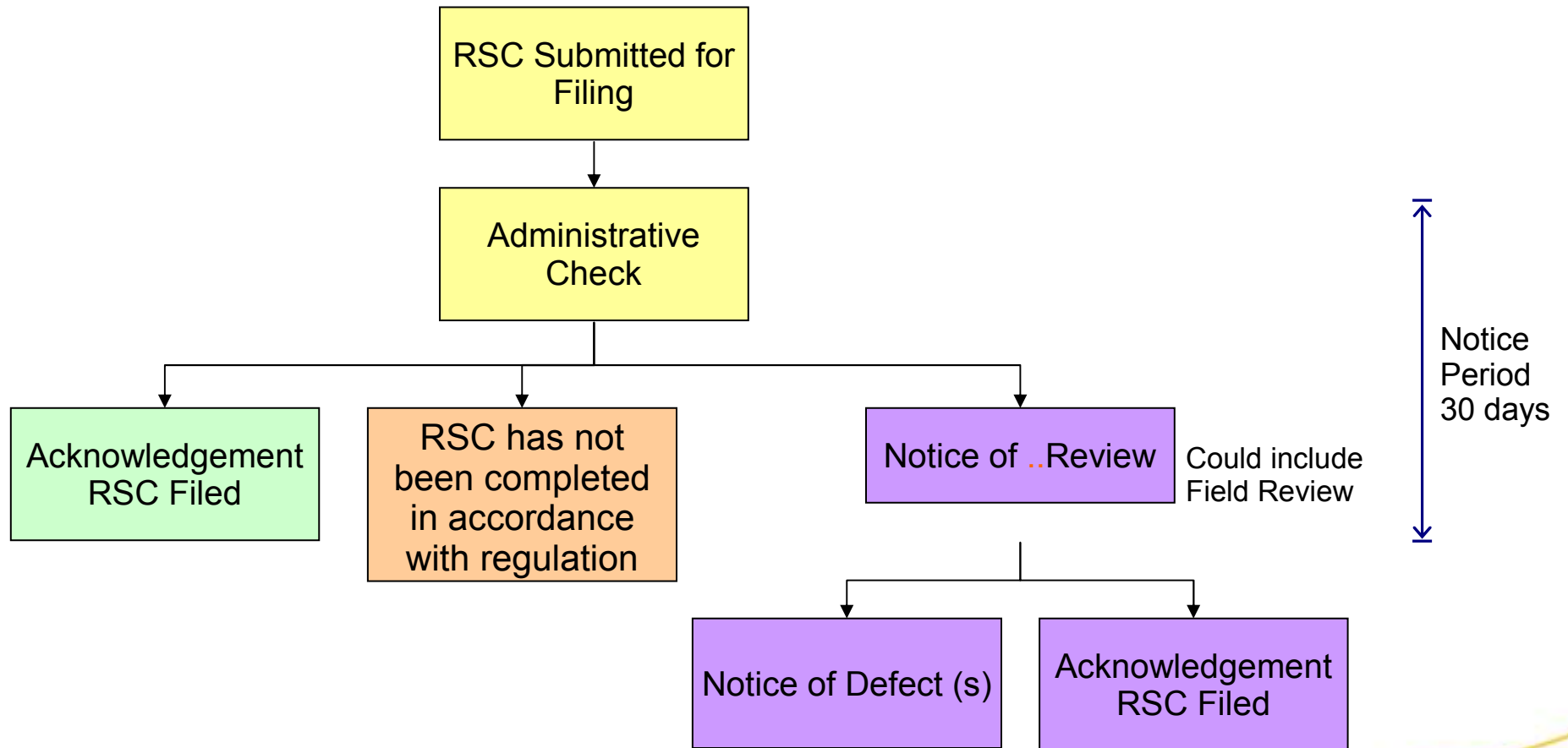
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Appendices

1. Record of Site Condition Filing Process
2. Table of Changes to Standards
3. Bonus Prohibition
4. Brownfields Ontario Resources
5. Green Municipal Fund

RSC Submission and Filing Process



Comparison of Standards Changes

Final 2009 Standards:	Compared to 2004 Standards
Less stringent (higher concentration)	23% (27)
More stringent (lower concentrations)	65% (78)
Equally stringent (unchanged)	8% (9)
New/removed standards	New standards: 5% (6)

Bonus Prohibition

- Municipal Act sec 106 and COTA sec 82 prevent municipalities from directly or indirectly assisting industrial or commercial enterprises by :
 - Giving or lending money, or municipal property
 - leasing or selling any municipal property at below fair market value
 - guaranteeing borrowing
 - giving a total or partial exemption from any levy, charge or fee.
- Purpose – maintaining a level playing field
 - Equity
 - Accountability
 - Fiscal Integrity
- However:
 - There are exceptions to that rule.

New Brownfield Resources

MMAH posted a chart and map of municipalities with brownfield incentives under a Community Improvement Plan

- 44 municipalities listed as of Oct. 2010
- Available at <http://www.mah.gov.on.ca/Page223.aspx>

MMAH recently posted the “Municipal Planning and Financial Tools for Economic Development

- Available at <http://www.mah.gov.on.ca/Page9392.aspx>

PPS Review – consultation period concluded, over 400 submissions received.

FCM Green Municipal Fund

Brownfields are one component of this larger fund, and FCM's objective is to provide \$150 million in funding by March 31, 2012 for Brownfield projects

Municipalities can borrow from FCM at a rate that can be 2.0% below the cost of funds from other sources, and can use FCM funding in conjunction with own plans and policies to maximize outcomes

Private sector developers: FCM recently modified the GMF to allow developers to borrow funds for brownfields projects under the following criteria:

- Minimum interest rate is 1.5% to 2% over Canadian bank rate.
- Risk-based criteria will potentially influence both final interest rate and loan value.
- Current average interest rate is 6%. May vary from project to project.
- Loan may potentially cover up to 80% of project value
- Municipal participation required, but definition of "participation" includes municipal grants or tax assistance via an approved Community Improvement Plan.

Information available from FCM staff:

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