

BROWNFIELD ASSISTANCE PROGRAMS

According to the U.S. Department of Environmental Protection, a brownfield is:

“Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” The 2002 Brownfields Law further defines the term to include a site that is: “contaminated by a controlled substance; contaminated by petroleum or a petroleum product excluded from the definition of ‘hazardous substance’; or mine-scarred land.”

The State of Florida has a similar definition for a brownfield site, which is “real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination” (§376.79, Fla. Stat.).

There are numerous incentives offered by federal, state, and local governments to encourage the rehabilitation and reuse of brownfield sites. In order for a site to be eligible for incentives from the State of Florida, it must be designated by resolution by the local government of jurisdiction and a Brownfield Site Rehabilitation Agreement (BSRA) entered into between the person responsible for brownfield site rehabilitation and the Florida Department of Environmental Protection (FDEP) or a delegated local program. The BSRA must establish the timeframes, schedules, and milestones for completion of site rehabilitation tasks and submission of technical reports, and other commitments or provisions. The federal government does not require a brownfield designation.

Since brownfield redevelopment is also an economic development tool as well as a means to redress environmental issues, some communities have designated areas that are eligible for economic development incentives as brownfields. For example, all lands within the City of Pompano Beach’s CRA are designated as brownfield sites. Additionally, Miami-Dade County, in 1999, designated all Empowerment Zones, Enterprise Zones, and Target Urban Areas in the unincorporated county as brownfields. It should be noted that property owners may elect to not be designated.

The following is a sample of programs and incentives that are available for identification and rehabilitation of brownfield sites:

Florida Department of Environmental Protection Incentives (FDEP):

Voluntary Cleanup Tax Credit

This program provides an annual tax credit for 50% of the costs, not to exceed \$500,000, for each site voluntarily rehabilitated. A site may receive bonus credits for providing on the rehabilitated site affordable housing or a health care facility or provider. Additional bonuses are available in the final year, after completion of cleanup, and for sites which require removing solid waste.

Liability Protection, Section 376.82, Fla. Stat. The Florida Legislature has created liability protection for (1) persons who enter into and complete a BSRA; (2) local governments implementing corrective actions at a contaminated site within an eligible brownfield area as a result of the involuntary ownership of the site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the state or local government involuntarily acquires title by virtue of its function as a sovereign, or as a result of ownership from donation, gift, or foreclosure; (3) purchasers of contaminated sites who are nonprofit conservation organizations acting for the public interest such as providing open space, or limited recreational, cultural, or historical preservation purposes; and (4) lenders, including those serving as a trustee, personal representative, or in any other fiduciary capacity, in connection with a loan. It should be noted these liability protections are only available if the person or entity did not cause or contribute to the release of contamination.

Clean Water State Revolving Loan Program. Clean Water State Revolving Fund (CWSRF) Programs are provided through the federal government grants and state matching funds that are equal to 20 percent of federal government grants. CWSRF monies are loaned to communities at lower than market rate interest rates, and loan repayments are recycled back into the program to fund additional water quality protection projects. Brownfield mitigation to correct or prevent water quality problems may be eligible.

Office of Tourism, Trade and Economic Development and Enterprise Florida, Inc. Incentives:

Loan Note Guarantee. The State of Florida will provide for up to five years a loan guarantee for redevelopment projects in brownfield areas. The loan guarantee applies to 50% of the primary lender's loan. If the project is for affordable housing, the loan guaranty applies to 75% of the lender loan. The guarantee is for lenders licensed to operate in Florida.

Brownfield Redevelopment Bonus. This Program is administered by Enterprise Florida and provides a pre-approved applicant with a tax refund equal to 20 percent of the average annual wage of the new jobs created in a designated brownfield area up to a maximum of \$2,500 per new job created.

Department of Revenue Incentives:

Sales and Use Tax Exemption – Building Materials (Tax Tip Sheet Tax Information Publication 00A0123)
Sales taxes paid on building materials purchased on or after July 1, 2000, used in the construction of a housing project or mixed-use project located in an urban high-crime area, enterprise zone, empowerment zone, Front Porch Community, designated brownfield area, or urban infill area, are eligible for refund.

Federal Incentives:

Federal Brownfield Tax Incentive. Under the Brownfield Tax Incentive, environmental cleanup costs are fully deductible in the year incurred, rather than capitalized and spread over time.

Federal Grants and Funding. These grants may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substance co-mingled with petroleum). Opportunities for funding are as follows: Brownfield Assessment Grant (each funded up to \$200,000 over three years; coalitions are funded up to \$1,000,000 over three years), Brownfield Revolving Loan Fund (RLF) Grants (each funded up to \$1,000,000 over five years) and Brownfield Cleanup Grants (each funded up to \$200,000 over three years). It should be noted that the U.S. Environmental Protection Agency does not allow governmental agencies administrative costs, with the exception of financial and performance reporting, thereby requiring other sources to subsidize implementation. Additionally, a property owner or local government that caused or contributed to contamination of the site cannot receive funds to assess or rehabilitate the site.

There are various resources available to assist local governments and property owners to identify, rehabilitate, and reuse brownfield sites. Following is the contact person for Broward County. It is recommended that representatives for the counties be contacted first for assistance regarding brownfield sites.

Broward County

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