

BROWNFIELDS REDEVELOPMENT: A WIN-WIN SITUATION

By James D. "Duff" Stump, PG



Brownfield sites have been traditionally defined as abandoned, idled, or underused industrial or commercial properties where expansion, reuse, or redevelopment may be complicated by real or perceived environmental contamination. However, to encourage the cleanup and redevelopment of Brownfield sites, the definition has been broadened. Currently, the Florida Department of Environmental Protection's (FDEP) definition of a Brownfield Area is a contiguous area of one or more Brownfield sites, some of which may not be contaminated, that has been designated as such by a local government through resolution. The key aspect of this designation is that, in this context, Brownfields do not necessarily need to be contaminated to be designated as such.

Oftentimes there is a stigma attached to industrial or commercial properties due to perceived environmental problems or because of environmental concerns stemming from historical or current land usage. Such real or perceived problems can result in reluctance by local governments and developers to become involved in these properties in favor of more pristine and less environmentally impacted sites. The Brownfield designation can be used in these cases to level the playing field for redevelopment activities. Benefits to redevelopment of Brownfield properties include facilitation of job growth, increase in local tax bases, removal of development pressures on undeveloped open land, and improvement and protection of the environment.

The Brownfields program was initiated by the United States Environmental Protection Agency (EPA) on an experimental basis in 1995. The purpose of this program was to restore real or perceived environmentally challenged sites without the threat of legal and financial repercussions that are commonly associated with the ownership of contaminated properties. This experimental program was so successful that the "Small Business Liability Relief and Brownfields Revitalization Act" was signed into law in 2002. This Act provided communities with a tool to access federal funds which have been set aside for redevelopment purposes. The ultimate goal of the Brownfield activities is the redevelopment of abandoned, idled, or underused properties. Redevelopment and revitalization of these formerly used properties helps to conserve undeveloped land and can have significant economic benefits to an area. In 1997, the State of Florida established its own Brownfield Redevelopment Act. It followed the same format as the 1995 federal Act, but added some additional language, including statutes that allowed the FDEP to oversee the State Brownfields program, while continuing to enforce environmental laws that the State had in place.

Prior to initiation of any Brownfield activities in an area, designation of a Brownfield site or Brownfield Area must be done by resolution through the local government. As of February 2010, a total of 238 sites had been designated as Brownfield sites or Brownfield Areas in the State of Florida. There are significant financial incentives involved in Brownfield redevelopment activities. Brownfield sites and Areas that enter into a Brownfield Site Rehabilitation Agreement (BSRA) with the State may be eligible for:

- A \$2,500 Job Bonus Refund for each new job created in a designated Brownfield Area by an eligible business (10 job minimum). These benefits may be greater if the Brownfield Area has other designations (e.g., an Enterprise Zone).
- A Sales Tax Credit on building materials purchased for the construction of an affordable housing project or mixed-use affordable housing project in a designated Brownfield Area.
- State Loan Guarantees for primary lenders of up to 50% on all Brownfield sites and up to 75% if the property is redeveloped as affordable housing, a health care facility, or health care provider.
- A 50% Voluntary Cleanup Tax Credit (applicable to Florida's corporate income tax or intangible personal taxes) annually on all eligible cleanup costs.
- A 25% Additional Voluntary Cleanup Tax Credit on all eligible costs when the cleanup is complete.
- A 25% Additional Voluntary Cleanup Tax Credit if the property is redeveloped with affordable housing, a health care facility, or health care provider.
- 50% One Time Voluntary Cleanup Tax Credit on eligible solid waste removal costs.

Additional federal financial benefits that may be available include:

- Site-specific activities grants to FDEP to conduct Phase I or Phase II Environmental Site Assessments and/or limited source removals for eligible recipients using federal grant funds.
- National Brownfields Assessment, Revolving Loan Fund and Cleanup Grants.
- A Brownfields Federal Tax Incentive that allows environmental cleanup costs to be fully deducted in the same year that they occur.

Additionally, there are significant regulatory benefits involved in Brownfield redevelopment activities. These regulatory benefits include:

- The use of Risk-Based Corrective Actions (RBCA) following FAC Chapters 62-785 and 62-777, which allow for expedient and cost-effective cleanup activities utilizing default cleanup target levels; risk assessment tools to drive alternative cleanup target levels; risk management options; institutional and engineering controls; and special relief for sites with groundwater target levels based on nuisance, organoleptic, or aesthetic considerations.
- Cleanup liability protection provided upon execution of a Brownfields Site Rehabilitation Agreement.
- Dedicated Brownfields staff in each FDEP district office whose primary responsibility is facilitating implementation of Brownfield Site Rehabilitation Agreements.
- Expedited review of all technical documents associated with Brownfield sites or Areas.
- EPA Comfort letters issued for Comprehensive Environmental Response, Compensation, and Liability Act sites.
- Lender liability protection.

In summary, the designation and redevelopment of Brownfield Areas is a valuable tool in rejuvenation of abandoned, vacant, or underused properties. Significant financial and regulatory benefits have been included in legislation designed to encourage redevelopment of these properties. A Brownfield designation opens the door to federal, state, and local incentives that otherwise may not be available to these potential at-risk properties. Assistance is available from firms such as Chastain-Skillman, Inc. to help stakeholders navigate the Brownfield designation process and obtain access to funding mechanisms.

James D. (Duff) Stump is a Senior Project Manager in Chastain-Skillman's Lakeland Office. He has over twenty-two years of experience in the environmental consulting business. Duff received a Bachelor of Science Degree in Geology from Eastern Illinois University in 1981 and a Master of Science Degree from the University of South Florida in 1984. Duff's work currently focuses on environmental site assessments. He can be reached at (863) 646-1402 or at jstump@chastainskillman.com.

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