

# BROWNFIELDS



Brownfields are abandoned, idled, or underused industrial and commercial facilities where expansion or redevelopment is complicated by perceived or real contamination. These sites lie abandoned frequently in urban areas, their former industrial occupants having either fled to the suburbs or gone out of business. The existence of brownfields within a community may contribute to, or may be a symptom of, overall community decline, including issues of human disease and illness, crimes, loss of educational and employment opportunities, and infrastructure decay. The environment is an important element of quality of life in any community, along with economic opportunity, educational achievement,

access to health care, housing quality and availability, provision of governmental services, and other socioeconomic factors. Brownfields redevelopment, properly done, can be a significant element in community revitalization.

## Regulatory Framework

### Federal Law

Several federal laws regulate brownfield issues, and the most prominent ones are the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) (typically referred to by its nickname, the Superfund law), and the Resource Conservation and Recovery Act (“RCRA”). The CERCLA is designed to ensure that past contamination is cleaned up; whereas the RCRA controls current generation, use, and disposal of hazardous materials. Other major federal legislation applying to brownfields includes the Superfund Amendments and Reauthorization Act (“SARA”), Toxic Substances Control Act (“TSCA”), Clean Air Act, Clean Air Act Amendments, and Clean Water Act.

In 2002, the President signed into law the Small Business Liability Relief and Brownfields Revitalization Act (“Brownfields Law”), which was designed to allow brownfields cleanups to be more efficient and effective by removing federal barriers. The law provides reduction in litigation by differentiating between large contributors of toxic waste and small businesses that dispose of only small amounts of waste at contaminated sites; provides for increased funding and flexibility to state and local governments for cleanup of brownfields; provides prospective redevelopers with assurances that the federal government will not pursue them for past pollution at the redevelopment site; adds a small business liability exemption to the Superfund law; and provides additional assurances to states that the federal government will not over-file on

brownfields cleanup decisions under state programs. For a copy of the bill, visit <http://www.epa.gov/swerosps/bf/>.

### State Law

In 1997, Florida established a model for overcoming the barriers to brownfield redevelopment. The Brownfields Redevelopment Act as amended (“Act”) is located in Sections 376.78 to 376.875 in the Florida Statutes (“F.S.”), was created to enable the Florida Department of Environmental Protection (“DEP”) and other agencies to assist in the reduction of public health and environmental hazards on existing commercial and industrial sites and the reuse of these lands. The Act created voluntary partnerships between the DEP, Office of Tourism, Trade and Economic Development (“OTTED”), Department of Community Affairs, Department of Revenue, Enterprise Florida, Inc., local governments, community residents, developers, investors, businesses, and lenders to provide a mechanism to restore industrial and commercial lands where contamination exists or is perceived to exist. The Act is composed of four cornerstones that break down redevelopment impediments: uniform cleanup target levels, liability protections, expedited reviews and time limits, and financial assistance. These building blocks can facilitate the reuse of industrial and commercial lands into productive and economically viable lands.

## Major Programs

### Federal Brownfields Pilot Program

In January 1995, the U.S. EPA announced that it would fund 50 brownfield pilot projects at up to \$200,000 each for two years. The pilot projects were designed to test approaches that better integrate reuse considerations into the corrective action cleanup process and to address concerns that application or the potential application of the RCRA to cleanup activities at brownfields may be slowing down cleanup progress. Currently, the EPA is carrying out its second round of RCRA Brownfields pilot projects under its RCRA Brownfields Prevention Initiative.

### Florida Brownfield Redevelopment Program

The Brownfields Redevelopment Program differs in several regards from the “traditional” cleanup programs administered by the DEP. The program is a “voluntary” program where the person responsible for brownfield site rehabilitation may have caused and is responsible for the original contamination and its cleanup or the person may be totally removed from causation of the contamination but choose to “voluntarily” cleanup and redevelop the site. There are two components to brownfield redevelopment programs: 1) redevelopment or revitalization of the site and 2) cleanup of any existing contamination.

The initial step (Section 376.80(1) of the Florida Statutes) in the brownfields redevelopment program is for the local government with jurisdiction over the proposed brownfield area or brownfield site to designate the property a brownfield area for rehabilitation. In doing so, local governments or Persons Responsible for Brownfield Site Rehabilitation (“PRFBSRs”) must establish an advisory committee or use an existing advisory committee that has formally expressed its intent to address redevelopment of the specific brownfield area for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice. “Brownfield Area,” is a contiguous area of one or more brownfield sites, some of which may not be contaminated. A brownfield area must be designated by a local government through resolution. In 2003, the total number of designated brownfield areas in Florida was eighty-three.

Another element of the brownfields program is the execution of a Brownfield Site Rehabilitation Agreement (“BSRA”) between the PRFBSR and the DEP or the approved local pollution control program. For a BSRA to be executed, a brownfield area must be designated and a responsible person must be identified. The PRFBSR must provide reasonable assurance to the local government prior to designation of the brownfield area that he or she has sufficient financial resources to implement and complete the BSRA and redevelopment plan. The legislation has specified the minimum qualifications required for contractors performing site rehabilitation program tasks to work in the Brownfields Redevelopment Program; those qualifications are listed in Section 376.80(6)-(7) of the Florida Statutes. Site activities are classified according to their cleanup phase to enable tracking of the individual components of a site cleanup.

## Incentives for Brownfields Cleanups and Redevelopment

Federal, state, and local governments provide economic and regulatory benefits for the redevelopment of brownfield areas. At the federal level, first, monies are appropriated to the Department of Housing and Urban Development (“HUD”) for brownfield- related projects and brownfields economic development initiatives. Second, monies are appropriated to the Environmental Protection Agency for brownfield activities for future pilot projects. Third, Community Development Block Grant (“CBDG”) funds are eligible for brownfield remediation and redevelopment projects. Fourth, Clean Water State Revolving Funds, capitalized by federal and state monies, provide low or no-interest loans to correct or prevent water quality problems.

The State of Florida also provides economic incentives for cleaning up and redeveloping brownfields. First, lenders and redevelopers who agree to cleanup sites enjoy liability protections, and those protections can be found in Chapter 376.82(2) of the Florida Statutes. Second, pursuant to Chapter 62-788 of the Florida Administrative Code (“FAC”), the State allows a tax credit of 35% on voluntary cleanup costs, and 10% additional credit during the last year of cleanup. Third, \$2,500 job creation bonus refund will be awarded for each job created in a brownfield area by an eligible business under Chapter 288.107 of the FAC. Fourth, the State grants low interest loans for the

purchase of liens, tax certificates or other claims. Fifth, sales tax credit is allowed on building materials used for the construction of a redevelopment project located in a designated brownfield area.

## Brownfields Transactions

Although a brownfield is characterized by the nature and scope of environmental contamination on the site, the primary factor in determining the market value of a brownfield is the value of the property in a clean state once that property is returned to a commercial or industrial use. The unique aspects of a brownfields transaction are the costs and risks associated with contamination and cleanup. As a result, developers should consider, in addition to market values, purchase costs, cleanup costs, speculator's costs (including taxes, rezoning costs, insurance, and fees), and investor's expected return on investment.

Another factor that plays an important role in brownfields transactions is the role of the community. As a community service, a brownfield project should work toward benefiting the local community and its neighborhoods. The brownfields revitalization project is one means to mobilize community members and community resources, and to build organizational capacity. For these to occur, the community must be proactive in the process of neighborhood revitalization, and community leaders should be participants in revitalization efforts directly or indirectly undertaken by the community or its organizations.

## Contact Information and Resources

To find out how your community scores with regard to environmental health, check out Environmental Defense Fund's Environmental Scorecard webpage. You input your zip code and it will tell you how your county ranked in terms of a variety of environmental factors including air and water pollution, toxic exposure and an environmental justice report. The link is <http://www.scorecard.org>.

### EPA Brownfield Program

- <http://www.epa.gov/swerosps/bf/index.html>

### DEP Brownfield Redevelopment Program

- <http://www.dep.state.fl.us/waste/categories/brownfields/default.htm>

### Legislation Online

- Federal Statutes  
<http://www4.law.cornell.edu/uscode/>
- Florida Statutes  
<http://www.leg.state.fl.us/>
- Florida Administrative Code  
<http://fac.dos.state.fl.us/>

Prepared by the Environmental and Land Use Law Section, Committee on Access to Justice

The Environmental and Land Use Law Section (“ELULS”) is an organization within the Florida Bar. One of the ELULS’s major purposes is to promote increased knowledge and understanding of environmental and land use law. In response to the need for increased legal services to people who are unable to afford legal counsel, the ELULS has created a Committee on Access to Justice to encourage pro bono activities in the areas of environmental and land use law. Right now, the ELULS is sponsoring a variety of activities, including *Legal Assistance through Legal Services, Inc. and the Florida Pro Bono Coordinators Association*, *Public Workshops on Environmental and Land Use Law*, and *Educational Materials for Citizens*.

For more information, visit the Florida Bar at <http://www.flabar.org/>; or contact the Environmental and Land Use Law Section, 651 E. Jefferson Street, Tallahassee, FL 32399-2300, 904/561-5623, <http://www.eluls.org>.

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