

# BROWNFIELDS 101

## INTRODUCTION

There are volumes of technical and legal information available for anyone interested in or involved in National or State Brownfields programs. All of it is very valuable and useful and a great source of reference for existing Brownfields programs. There are National, State and regional organizations dedicated to disseminating information and services for the advancement of Brownfields activities. They are very helpful organizations with whom to be associated because, within their membership, they more than likely have the answers to most questions about Brownfields. Most people involved in Brownfields on a local level are willing to assist other potential participants with putting together their Brownfields redevelopment programs, but they may not have the time or resources to provide as much as would be needed. Nonetheless, the most frequently asked question by people who are considering a Brownfields program for their own community or region is, How do we get a Brownfields program started?

Hopefully this document will fill an apparent void and answer most of the questions surrounding the establishment of a Brownfields program.

### Identifying a Brownfields Site or Brownfields Area

The first step in developing a Brownfields program is to know just what Brownfields are. If you attend a Brownfields workshop, seminar, conference, or any other organized Brownfields function, you are going to see and hear the definition of a Brownfields. There are many variations but they all essentially say the same thing. The following is but one:

*Brownfields are abandoned, idled, or underused industrial and commercial properties where expansion, reuse, or redevelopment may be complicated by real or perceived environmental contamination.*

The first thing that must be recognized is that the definition of a Brownfields does not say there is contamination anywhere. The implication is that a site or area *might* be contaminated and is perhaps *perceived* as contaminated. However, whether or not the site or area is contaminated cannot be determined until some form of environmental investigation is undertaken. What the definition does say is that Brownfields are abandoned, idled, or underused properties. They don't even have to be derelict properties, although many of them are. Therefore, a community could definitely have a Brownfields site or area that has absolutely no contamination on it at all.

### Definition of a Brownfields Area

As a community, region, organization, or even an individual begins to contemplate a Brownfields program, they must decide if they will be designating a Brownfields site or an area. Brownfield sites fall into the above definition on a single site basis. A Brownfields Area, however, is defined as follows:

*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.*

Again, there is nothing in the definition that says a Brownfields Area is contaminated. In fact, the definition could just as well have said that none of the sites within the area need to be contaminated for the area to be considered a Brownfields. If there are numerous vacant or underused buildings and sites within a certain defined area that also has thriving, environmentally unsuspected businesses, the whole area could still be designated as a Brownfields. This is done, according to the definition, by resolution.

### **Florida Statutes and Resolutions**

The one qualification that exists for designating a Brownfields Area is that it must be done so by resolution through the local government. Florida Statute, Title XII, Chapter 166.041 defines how that resolution is to be enacted for municipalities, and Title XI, Chapter 125.66 defines county resolutions.

### **Approval of Individual Brownfield Sites**

Designation of a Brownfields Site follows the same format as a Brownfields Area. However, in the case of individual site designations, each site must be defined and designated, one site at a time, through the same resolution process. That is why it is seen to be more convenient and expedient to have one resolution for an entire area.

### **Brownfields as a Redevelopment Tool**

In 1995, the Brownfields program was initiated by the U.S. Environmental Protection Agency (USEPA) as an experimental idea for restoring the many environmentally challenged sites throughout the United States, without the threat of legal and financial repercussions commonly associated with ownership of contaminated properties. The early attempts to redevelop these slighted contaminated sites was so successful that, in 2002, the President of the United States, upon the recommendation of the 107<sup>th</sup> Congress, signed into law the "Small Business Liability Relief and Brownfields Revitalization Act." The second part of this legislation is referred to as the "Brownfields Revitalization and Environmental Restoration Act." All of it is designed to allow communities around the country to access federal funds that have been set aside for redevelopment purposes, including environmental assessments and cleanups, as well as environmental health studies and environmental training programs.

In 1997, the State of Florida established its own Brownfields Redevelopment Act. It followed the same format as the federal act but added some its own language, including Statutes that would allow the Florida Department of Environmental Protection (FDEP) to oversee the state Brownfields program, while continuing to enforce the environmental laws the state had in place.

Between the two legislative actions, Brownfields became a *tool for promoting and enhancing redevelopment* on sites that had formerly been ignored due to perceived environmental problems or because of known past activities on site that might have created some environmental concerns. While cleanup of contaminated sites is the ultimate goal of Brownfields activities, the program itself is primarily designed to allow redevelopment and revitalization of community areas that have been abandoned by commerce and industry. Most of these businesses may have relocated to cheaper, more pristine and less environmentally impacted sites on the outskirts of town. Some may have merely gone out of business, closed their doors and walked away.

## GETTING STARTED

Knowing the difference between a Brownfields Site and a Brownfields Area, the group or individual that has decided to establish a Brownfields program must first determine whether they are going to pursue a designation as a site or an area. The requirements are generally the same, as noted above, and there must be an approved resolution by the local government.

### Putting a Team Together

Since a Brownfields Area is the easiest to work with when there is more than one Brownfields site, for our purposes we will approach the preparations from that perspective. For simplicity, we will establish our program based upon the existence of two abandoned, rundown sites within three blocks of each other. The number of Brownfield Sites within a Brownfields Area could and does vary in each community. There is no set number that has to be met; a Brownfields Area could consist of a single site, and often does. For our example, we can say that because of the existence of these two sites, there is a noticeable decline in business by other merchants in the neighborhood.

**Establishing a Leader.** It is recognized that if something is not done quickly, the entire corridor may become abandoned. Someone has decided to step forward and lead the recovery movement. It could be anyone, a business person, a nearby resident or community activist, a developer, a financial professional, someone employed by the municipality, anyone who has the ambition to turn things around. They should be prepared to dedicate an appreciable amount of time and effort to the project.

**Assembling Stakeholders.** The first thing one should do is to enlist the help of an elected official who will support the effort, one who has shown true dedication to the community and is recognized as one of action beyond words. Next should be an assembly of stakeholders, people who would have a real interest and an influence on what is happening and what may happen in the community, particularly in the subject neighborhood. These would be drawn from the community leaders and business people, especially those in the immediate neighborhood. Real estate specialists could be enlisted, economic development professionals, community activists, leaders and members of other community organizations can be invited for a roundtable discussion. A regional representative from the FDEP should be contacted to help explain to the stakeholders what a Brownfields program is intended to accomplish. The FDEP representative would have to be notified, regardless, when a

Brownfields program is being considered. They would have to approve such activity. Project Coordinators from other Brownfields communities could be invited to speak to the group. An initial meetings should be set up that would be convenient for everyone who might have an interest and could provide input. The first meeting should be by invitation only, being cautious about not having more than one elected official at the meeting, in keeping with the requirements of the state political sunshine laws.

**Establish an Advisory Board.** If a consensus can be arrived at regarding the establishment of a Brownfields program, an initial advisory board or committee should be chosen from the assembly to follow through on the designation process. A city, county, or regional employee should be assigned to act as a coordinator of the program, and a workshop meeting should be scheduled with the advisory board to lay the foundation for the project. This would be an open, public meeting and notices should be posted in visible areas advertising the meeting and soliciting community input. It might be a good idea to publish newspaper notices as well. As long as it is advertised as a public meeting, any number of elected officials may be in attendance.

### Getting the Public Involved

If there is going to be any success to the program at all, it will have to be through the endorsement and support of the community as a whole. People want to feel that they are making the choices, not having something forced upon them. Among the more difficult challenges is going to be to educate the people about the Brownfields program. Unfortunately, its title does provide some negative connotations. However, the program has been around for many years under its existing title and may never be known as anything else.

### First Public Meeting

Assuring the presence of the initial advisory board and the officially assigned Project Coordinator who will serve as liaison for the principal government entity involved in the program, the first official public meeting of the potential Brownfields program should be scheduled. Of course, the first decision to be made at the meeting should be whether to continue to organize and pursue the Brownfields program. Thereafter, a selection of membership should be made for the proposed permanent advisory board. The board membership would have to be approved by the governing authority during a public hearing or meeting. A determination should also be made whether the area of concern will be assembled as a Brownfields Site or a Brownfields Area. Discussions should be made regarding when public notices would be submitted to the newspaper. *Additional community outreach to educate the community about the program should be considered before official notices are provided.* Initial goals should be defined, as well as a long-term mission for the organization.

## Community Partnerships

Partnerships with other community programs should be established in the very beginning and should continue through the life of the program. If there are already redevelopment or community action boundaries established, these may be used to define the boundaries of a Brownfields Area. Such things as Enterprise Zones, Community Redevelopment Areas (CRAs), Empowerment Zones, or Economic Development Areas can be facilitated to obtain additional funding resources and further delineate the redevelopment purposes of the Brownfields program. People who are officers or members of these organizations should be specifically invited to the Brownfields advisory board meetings.

## Government Endorsement

Since the program involves government funding and activities, local government endorsement, either at the community, county, or regional level, will be necessary. The Project Coordinator should appear before the governing authority with an agenda item requesting their approval to continue establishing a Brownfields Program in their jurisdiction.

### ***BROWNFIELDS DOES NOT MEAN CONTAMINATION!***

That is a mantra that must be constantly recited. The public should be made to understand that a Brownfields designation is not an identification of contaminated sites. Whether a site is contaminated or not can only be determined through Environmental Site Assessments (ESAs) conducted by environmental professionals. A Brownfields designation is a tool that provides the community with access to federal funds that allow environmental assessments and possible cleanup of properties that have a negative perception about them. It should be recognized that these perceptions may be inhibiting their sale or redevelopment.

## Opting out of the Brownfields Program

The designation process does allow owners to opt out of the designation if they do not want their property included. A formal letter must be presented for exclusion. If an owner formally requests that their property be excluded, the omitted area must be clearly defined in the proposed resolution along with the specifically defined Brownfields Area.

## Public Notice

Once a decision has been made to establish a Brownfields program with Brownfield Sites or a Brownfields Area, public notices must be made in newspapers or other information media sources. Florida Statutes, Title XII, Chapter 166.041 (3)(c)2, for municipalities, and Title XI, Chapter 125.66 (4)(b)2, for counties, defines the format for printed newspaper notices and also for presentation at public hearings. The required resolution must then have a first introductory reading at a public hearing in which public comments can be made. The hearing could be in conjunction with regularly scheduled City Council, Board of County Commissioners, or other official government meeting. The first reading should be followed no sooner than one week later by a second reading which, if approved, would provide the resolution with formal adoption.

## Notifying FDEP

There is no formal paperwork for notifying the FDEP of an established Brownfields Area. However, the Department will want to have a copy of the approved and signed resolution defining the new designation. For tracking purposes, the FDEP will assign a number to the area.

## MAINTAINING A SUCCESSFUL BROWNFIELDS PROGRAM

The whole point in establishing a Brownfields program is to qualify the community or neighborhood for federal and the state funds, liability protections, and financial incentives the program makes available. These funds and protections are designed and offered to be used in the advancement of redevelopment programs being pursued by the community or non-profit organization. Whether assistance is sought at the State or Federal level, certain protocols will have to be followed and the facilitator of the project, either the Project Coordinator, or Project Manager, or Project Director, or whatever title is chosen, is going to have to continually follow up on all of the terms and conditions imposed by those government agencies.

## Responsibilities

Many, if not most, Brownfields project facilitators are or will be maintaining their Brownfields program on a part time basis. It can be done, provided the necessary effort is put forth at the times when it is most needed. The more successful and smoother running programs are managed when a larger portion of one's job description is dedicated to Brownfields. However, it is acknowledged that some communities do not have the luxury of allowing their Brownfields program to have exclusively dedicated resources for its management. Nonetheless, Brownfields program facilitators need to be aware of the commitment required. What follows are some of the more demanding aspects of the position.

**Grant Proposals.** The project facilitator is going to have to write, or arrange to have written, the grant proposals necessary to obtain whatever funds are being sought from the state or federal government.

**Grant Application.** Once the grant is announced to be awarded, the grantee must actually apply for the funds. Along with the application, a work plan must be submitted to the federal grantors describing how the funds are going to be used and how the program is going to be operated, including the necessity for continued community outreach.

**Quarterly Reports.** Every three months, a multi-paged report must be submitted to the regional office of the USEPA, confirming the activities committed to in the Workplan. Financial accounting will have to be made to show how the funds were spent, and general descriptions must be offered regarding consulting work that had been conducted during the reporting period.

**Community Outreach.** One of the more important aspects of the grant proposal and workplan is the initiation and continuation of community outreach programs. The project facilitator should be attending community meetings relative to redevelopment, rejuvenation,

and environmental issues. He or she should be meeting with the community planning department and other entities. Community workshops should be scheduled periodically by the project facilitator to advise the community about Brownfields activities in their neighborhoods. Workshops are also opportunities to further educate the community about the basic concepts of Brownfields, and also to provide updates on the latest methods used to cleanup and market Brownfields properties. The facilitator may additionally use workshops to advise neighborhoods about upcoming redevelopment projects in the community.

**Quality Assurance Management Plan (QAMP).** There are certain quality assurances the USEPA requires before they will provide funds to Brownfields projects. Because there are liability issues surrounding environmental assessments on Brownfields sites, certain criteria must be adhered to when assessments are being conducted. Also, the USEPA wants some assurance that the funds they provide will be utilized properly. The QAMP offers this oversight with predictable accountability. The local Brownfields facilitator is required to write an acceptable QAMP for their program, or arrange to have it written.

**Assigning and Monitoring Consulting Activities.** The project facilitator must establish a working relationship with one or more environmental consulting firms. The State of Florida requires a Request For Qualifications (RFQ) process through which consulting firms can be selected fairly and without bias. It is also known as the Consultant's Competitive Negotiations Act, (CCNA) Section 287.055 of the Florida Statutes. It is the responsibility of the project facilitator to arrange for a selection committee to interview as many consulting firms as respond to a public RFQ and, using a qualified scoring system, select as many consultants as they deem necessary to complete the anticipated Environmental Site Assessments (ESA)s.

Once the consultants are selected, the project facilitator will be responsible for assigning specific projects to the consultants that are chosen. During Phase I and Phase II ESAs, the project facilitator should monitor the assessment activities as much as possible. He or she must review the documentation and reports provided by the consulting firm.

Before any Phase II ESA activities are conducted, the USEPA requires the completion of a **Quality Assurance Project Plan (QAPP)** for each specific site on which these activities will be taking place. The project facilitator is responsible for assuring the QAPP is submitted in a timely manner. He or she will review the document before it is submitted to be sure is properly prepared.

**Property Profile Forms.** Any Phase I ESAs that are completed in the reporting quarter must be accompanied by a property profile form, which locates the property geographically, provides a brief history of the site, the funding resources employed, and identifies some of the potential contaminants found during the assessment. The form is generally completed by the facilitator of the local Brownfields program.

**Reviewing (ESA) Reports.** Before an ESA report is presented to the owner of a Brownfields property that has undergone a Phase I or Phase II ESA, the project facilitator must review the documents for accuracy and completeness.

**Budget Oversight.** Periodic reviews of the project budget must be made to assure the funds are being utilized properly and within the stated balances proposed in the grant application.

**Establishing Brownfields Sites.** Most Brownfields programs begin with known sites of concern and voluntary participants. However, in order to have a continuous program that is beneficial to long-term redevelopment in the community, the facilitator must constantly update the list of potential Brownfield sites. This is accomplished through field research, getting out into the community and identifying potential sites. Contacts need to be made with owners of potential Brownfields sites, letters need to be written, the program needs to be enthusiastically promoted and additional sites need to be volunteered into the program.

**Interaction With Property Owners.** Property owners who are participating in the Brownfields Redevelopment program need to be kept advised about the progress of their project. If the owner/developer chooses to sign a cleanup agreement, a Brownfields Site Rehabilitation Agreement (BSRA), with the State and voluntarily cleanup the site, the project facilitator should assist them in their effort and with any other aspect of Brownfields activities on their property.

**Site Selection Criteria.** As sites are selected for assessment, certain criteria should be met in the process and prioritization. The local program facilitator will need to provide the advisory board the necessary information for them to make intelligent decisions about selecting and prioritizing sites for Brownfields activities. A suggested list might include:

- A formal request by the property owner/buyer to have the property designated as a Brownfields site.
- Is the site suspected of having some form of environmental issue?
- Does the site pose an imminent threat to public health or the environment?
- Are there plans in place for the sale and/or redevelopment of the site?
- Is the site accessible for conducting assessments and cleanup?
- Do the redevelopment plans support the goals of the neighborhood or community revitalization plan?
- Can the site reasonably become market-ready?

**Overall Liaison.** The project facilitator is also the liaison between the owner, consultant, USEPA, State agency, advisory board, local community officials, developer, planning department and many other stakeholders in the project. Time needs to be set aside for communicating the Brownfields activities to as many interested people as there may be.

**Public Contact Office.** The project facilitator should maintain an office where records can be kept and communication of information is available to the public on a daily basis.

**Continuous Education Programs.** In order to maintain a good working knowledge of the federal and state Brownfields programs, along with their related laws and statutes, the project facilitator should regularly attend state, federal, and national workshops to obtain the necessary information to be applied to their local program. Education regarding new accountability and reporting requirements being introduced by state and federal oversight agencies should be sought whenever possible. Many educational opportunities can be acquired at State and National Brownfields conferences. Innovative methods of remediation

and Brownfields property redevelopment and marketing can be and should be explored at available conferences and workshops.

**Facilitating Advisory Board Meetings and Workshops.** Regularly scheduled meetings of the advisory board must be established at a predictable location to keep any program going forward. They can be as often as once a month, depending on the variety and size of the projects and their activities, or there may be several months between meetings. Regardless, continuous communication should be maintained. It will be the project facilitator's job to organize and facilitate these meetings. In order to keep the community advised about the most current Brownfields innovations as well as new reporting and qualification requirements, periodic workshops must also be organized.

## **TAKING ADVANTAGE OF INCENTIVES**

The Brownfields program is all about redevelopment. It is also about incentives, on the federal, state, and local level to facilitate that development. Some of the incentives in the Brownfields program have legal ramifications that must be addressed. Others have certain qualifications that must be met. They are all supportive engines that move the project forward. The project facilitator should have a working knowledge of the incentive aspects of Brownfields; however, there are many more knowledgeable organizations and people who can help in the interpretation of eligibility standards surrounding the many Brownfields incentives available.

At the local level, one should contact the regional or municipal planning department to find out what impact fees may be waived for a Brownfields redevelopment project, or what job bonuses and other incentives might be available. In the State of Florida, the FDEP can be contacted through its regional departments. The regional representatives can assist in determining what incentives are being offered through their departments. They will be able to explain the eligibility requirements and the paperwork and commitment necessary to qualify. Florida also has the Governor's Office of Tourism, Trade, and Economic Development (OTTED), which has contracted with an organization called Enterprise Florida, that will qualify and distribute incentive funds to eligible Brownfields projects. Both OTTED and Enterprise Florida are available to explain how a project can obtain eligibility for some of the State incentives. The USEPA has regional contacts who can clarify the liability protection aspects of the Brownfields program as well as the various grants available from their office to facilitate environmental assessments, cleanups, and training programs in the field of environmental protection and enhancement.

**Incentive Programs.** Following is a brief overview of some of the incentives offered for Brownfields projects.

- Voluntary Cleanup Tax Credit (VCTC) – Tax relief on intangible personal taxes or corporate income taxes for voluntarily cleaning up a Brownfields site.
- Sales Tax Refunds - paid for building materials used in the construction of certain qualified housing projects.

- Risk-Based Corrective Action (RBCA) - allows for expedient and cost-effective cleanup activities on Brownfields sites.
- Job Bonus Refunds - provides \$2,500 per job to qualified target industries that create a minimum of 10 new jobs within a Brownfields area.
- Loan Guarantee and Low-Interest Loans - for contractor liens, tax certificates, and loan loss reserves.
- Liability Relief - in conjunction with a Brownfields Site Rehabilitation Agreement (BSRA).
- Relief From Third-Party Remediation Liability - Allows that an owner/developer cannot be compelled to cleanup in excess of the BSRA.
- Cleanup Grants – USEPA grant funding for properties owned by municipalities or non-profit organizations.
- Training Grants – USEPA grant funding for training in environmental fields.
- Health Study Grants – Allowing a certain percent of USEPA assessment grants to be used in health research relative to Brownfields.

Most local communities may offer additional incentives for Brownfields redevelopment, such as a waiver of impact fees or tax compensations and other potential savings.

## **CONCLUSION**

Successful Brownfields projects or programs do not happen automatically once the initial steps are taken to establish them. Someone has to follow through at every crossroad, from awarding environmental consulting contracts to completing the required USEPA paperwork on through to the restoration of the property and its ultimate redevelopment. One person cannot handle it alone and, while it is not impossible to conduct the business of a Brownfields program on a part time basis, doing so may require a Herculean effort if any success is to be realized. Regardless, there are resources that are readily accessible to the local Brownfields project facilitator for assistance, guidance, and information. All of them are available to help the Brownfields program succeed nationally, statewide, regionally, and locally. The following is only a sampling of organizations and individuals that are impacting the Brownfields movement.

- U.S. Environmental Protection Agency (USEPA) – Project Officers, Managers and regional contacts. Florida is in the Region 4 contact area.
- Florida Department of Environmental Protection (FDEP) – Brownfields district representatives.

- Governor's Office of Tourism, Trade, and Economic Development (OTTED) – Administration of State Brownfields economic incentive funds.
- Enterprise Florida Inc. – Contracted qualifier and distributor of Brownfields economic incentive funds.
- Florida Brownfields Association – State non-profit service organization providing information and services to the Brownfields program, its participants, and its stakeholders.
- Florida Brownfields Project Facilitators - Local Brownfields Project Coordinators, Managers, or Directors.