

Developing Affordable Housing on Brownfields – A Natural Connection



by Jason Lichtstein

Affordable housing developers naturally understand the value of urban infill sites to their projects, given their central location and proximity to existing infrastructure, population, and community amenities already in place.

Designed to encourage the cleanup and redevelopment of Brownfield sites – including as affordable housing – the State of Florida offers a strong range of incentives to spark the interest of affordable housing fans. As a result, if you’re developing or putting together a new affordable housing development, you may want to take a close look at Florida’s Brownfield incentives.

Background on Brownfields

In the 1990s, the “Brownfield movement” arose to bring greater ease and predictability to the acquisition and development of impacted land, recognizing that its redevelopment and reuse is good for the environment, the community, and the economy. Begun in 1997, Florida’s Brownfield program is now a leader in the nation, offering a creative mix of financial and regulatory incentives.

Florida broadly defines a “Brownfield” and enables flexible Brownfield designations by local governments. Under Florida’s Brownfields Redevelopment Act, “Brownfield areas” are determined and designated by cities or counties, at the local government’s initiative or upon request. “Brownfield sites” are defined as “real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.”¹ A Brownfield site, thus, need not be contaminated. In turn, a “Brownfield area” is defined as “a contiguous area of one or more brownfield sites, some of which may not be contaminated.” Brownfield areas can also include – but don’t need to – all or part of existing CRAs, enterprise zones, or empowerment zones.²

So, while a “Brownfield area” must include at least one Brownfield site, a Brownfield area can also be quite large and include many other non-contaminated sites.

In Florida, there are more than 270 Brownfield areas, and many Brownfield areas cover large parts of some cities, usually as an economic development tool. This provides a real opportunity for affordable housing developers, because even if you are developing on a site without contamination, your project may be eligible for a Brownfield incentive because the site is located in a Brownfield area.

Florida’s Main Financial Incentives for Affordable Housing on Brownfield Sites

1. Sales Tax Refund for Building Materials

A Florida sales tax refund is available for building materials purchased and used in the construction of a “housing project” or a “mixed-use project” located in a Brownfield area.³ On a single affordable housing development, this incentive can result in several hundred thousand dollars back. After the project has been constructed and completed, developers or owners apply for and receive a full, lump sum state sales tax refund for “building materials” purchased, which are defined as “tangible personal property that becomes a component part of a housing project or a mixed-use project.”

A “housing project” is defined by statute as:

- The conversion of an existing manufacturing or industrial building to housing units in an urban high-crime area, enterprise zone, empowerment zone, Front Porch Community, designated brownfield area, or urban infill area and in which the developer agrees to set aside at least 20 percent of the housing units in the project for low-income and moderate-income persons or
- The construction in a designated brownfield area of affordable housing.

Establishing refund eligibility for affordable housing constructed in a Brownfield area is much simpler than demonstrating that an existing manufacturing or industrial building has been converted to housing. “Conversion” from a previous use can be difficult to show.

Alternatively, a “mixed-use project” is also eligible for the sale tax refund, which is defined as:

- The conversion of an existing manufacturing or industrial building to mixed-use units that include artists’ studios, art and entertainment services, or other compatible uses.
- A mixed-use project must be located in an urban high-crime area, enterprise zone, empowerment zone, Front Porch Community, designated Brownfield area, or urban infill area, and the developer must agree to set aside at least 20 percent of the square footage of the project for low-income and moderate-income housing.

Sales tax refund applications are to be submitted to the Florida Department of Revenue within six months after the project is deemed to be “substantially completed.” Refund applications must include (i) a copy of the building permit; (ii) certification by the local building code inspector that the project is substantially completed; and (iii) a statement from the general contractor (or owner) that lists the building materials used, their actual cost, the amount of sales tax paid on these materials, and copies of invoices reflecting payment of sales tax.

2. Voluntary Cleanup Tax Credit

Affordable housing developers can also benefit from state environmental tax credits under Florida’s Voluntary Cleanup Tax Credit (VCTC). Under the VCTC program, a tax credit on eligible costs for environmental cleanup work is available for sites located in a Brownfield area and governed by the terms of a Brownfield cleanup agreement. A 50% state tax credit is provided, up to a maximum annual \$500,000 per site. Applications are handled by the Florida Department of Environmental Protection. While the VCTC tax credit is available against state corporate income tax, there is also an active third-party market for their sale and transfer.

There is a large additional tax credit bonus for affordable housing sites.⁴ A one-time VCTC bonus is available for affordable housing constructed on Brownfields—25% of the environmental costs incurred and paid over the project’s lifetime, up to a maximum \$500,000 award. To receive this bonus:

- The project must qualify as affordable housing under Florida law (for either extremely low-income, very low-income, low income, or moderate-income persons); and
- The applicant must provide “a certification letter from the Florida Housing Finance Corporation, the local housing authority, or other governmental

agency that is a party to the use agreement indicating that the construction on the brownfield site has received a certificate of occupancy and the brownfield site has a properly recorded instrument that limits the use of the property to housing.”

For sites with contamination, VCTC is a lucrative incentive, returning to developers 50 cents on the dollar for eligible environmental costs—and for affordable housing, a 25% bonus. Recognizing the strength of the VCTC program, the Florida Legislature in 2011 increased the annual VCTC amount available from \$2 million to \$5 million.

3. Other Brownfield Incentives

- If environmental work is necessary at an affordable housing site to address contamination, a Brownfield cleanup agreement may be attractive, in the form a Brownfield Site Rehabilitation Agreement (BSRA) with FDEP or a local delegated program. The BSRA governs the terms of the site’s cleanup and entitles the signatory to expedited agency review of submissions and state law liability protections. A BSRA is also necessary for VCTC eligibility.
- State Brownfield job bonus refunds—up to \$2,500 per new job created—are also available if applicable criteria are met, including that at least 10 new, permanent full-time Florida jobs are created (excluding construction and environmental jobs).
- Florida’s Brownfield program offers state loan guarantees for Brownfield projects—including affordable housing—up to a total of \$5 million in state loan guarantees for a maximum of five years.

Overall, Florida’s Brownfield program offers a strong mix of incentives to facilitate and promote the cleanup and redevelopment of Brownfields into affordable housing. Tapping these incentives can result in real dollars for you and your project, bringing housing and environmental benefits to the community. **HNN**

¹ Fla. Stat. § 376.79(3).

² Fla. Stat. § 376.79(4).

³ The statutory discussion in this section relates to Fla. Stat. § 212.08(5)(o).

⁴ Fla. Stat. § 376.30781(3)(d).

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