

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY: Economic Development	CODE NUMBER: AC- 9-1
TITLE: Brownfields Community Redevelopment Program	ADOPTED: 6/24/03
	AMENDED:
	ORIGINATING DEPARTMENT: Smart Growth

PURPOSE/SCOPE:

To establish a process and procedure to assist a qualifying Brownfields Project Sponsor to obtain designations and approvals for status as a "brownfield" under applicable Federal, State or local public and private programs for brownfields assistance, including designating a "brownfield site" or "brownfield area" pursuant to the Florida Brownfields Redevelopment Act.

KEY DEFINITIONS:

"Brownfield sites" means sites that are generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination.

"Brownfield area" means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental-Protection-Agency-designated brownfield pilot projects.

POLICY/PROCEDURE:

1. BROWNFIELDS POLICY OF THE BOARD OF COUNTY COMMISSIONERS

1.0 Brownfields are abandoned, idled industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. Brownfields not addressed by environmental remediation are an inefficient economic use of urban land; contribute to community decline, slum and blight; present a potential hazard to public health; and unaddressed, brownfields result in premature expansion and sprawl of urban development. Environmental remediation and reuse of brownfields is in the economic, environmental and community interests of the county.

1.1 Brownfields Community Redevelopment Program. This policy establishes a Brownfields Community Redevelopment Program by Lee County Board of County Commissioners pursuant to the Florida Brownfields Redevelopment Act and the Board's own Brownfields initiatives. This program shall be in effect in the unincorporated area of Lee County.

AC-9-1 (Continued)

- 1.2 Brownfields Community Redevelopment Program Scope. It is the policy of the Board of County Commissioners to provide assistance and incentives to public and private land owners and businesses to facilitate the owner's environmental cleanup and reuse of contaminated urban property as part of the county's redevelopment and growth management strategy. The Board will offer a program of assistance through administrative, regulatory assistance and financial incentives available to qualified Brownfields projects appropriate to the needs of the community and through a program of community brownfields designations.

2. APPLICATION FOR DESIGNATION

- 2.1 Brownfields Pre-application Meeting. The Brownfields Project Sponsor shall meet with county staff and other Brownfields interested agencies to discuss the Brownfields redevelopment program applications and compliance with the county program qualifications. Brownfields Projects must meet the basic definition and intent of brownfields redevelopment and reuse.
- 2.2 County Brownfields Application. The county will provide assistance to a Brownfields Project Sponsor who completes a Brownfields Community Redevelopment Project Application identifying the project site, the scope of the proposed brownfields project, and site/project information to establish qualification for assistance under the Florida Brownfields Redevelopment Act.
- 2.3 Brownfields Program Fees. The county shall not charge a fee for the application and review of a Brownfields Community Redevelopment Project under this policy.

3. BROWNFIELDS PROJECT REVIEW AND RECOMMENDATIONS

- 3.0 Brownfields Review Actions. The county will review the Brownfield Project Sponsor's Application and consult with any Federal, State and local agencies as to any Brownfields requirements which may be part of the approval of the Brownfields Project. The county will provide its review comments and schedule the appropriate agenda items with the Board of County Commissioners within 30 days of establishing that the Brownfields Project Sponsor has an application with sufficient information required to qualify for designation.
- 3.1 Program Qualifications. Brownfields Projects must meet the minimum requirements of the applicable designation and assistance guidelines for which the project is seeking to qualify under a Federal, State or local program. These requirements are provided for in Federal, State and local law related to Brownfields. It is not the intent of the Board of County Commissioners to establish any further extent of requirements for qualifications other than those of this Brownfields Community Redevelopment Program policy and existing Brownfields laws and rules.
- 3.2 Public Meetings. The Brownfields Project Sponsor must meet the requirements of the Florida Brownfields Redevelopment Act regarding public notification and public meetings. Notice of any meeting shall be made in advance of the meeting date and must be advertised in compliance with the Florida Brownfield Redevelopment Act. The meeting shall be in a public place in the area to be designated. The Brownfields Project Sponsor will arrange, publicize and facilitate the meeting, and provide a record of the meeting as a part of the Brownfields Application.
- 3.3 Brownfields Advisory Committee Requirement. A Brownfields Advisory Committee of residents or property owners, whose proximity to the site or area make them stakeholders, shall be established to advise the Board of County Commissioners of brownfields site and area designations. The Board

AC-9-1 (Continued)

of County Commissioners may temporarily act as an interim Brownfields Advisory Committee in the absence of community residents or property owners forthcoming to fulfill this requirement.

- 3.4 Brownfields Areas and Sites. The Board of County Commissioners shall establish designations for Brownfields areas and sites in accordance with the Florida Brownfields Redevelopment Act. This action may be taken by the county on its own initiative for a public purpose, or at the request of a Brownfields Project Sponsor.

4. BOARD OF COUNTY COMMISSIONERS' ACTIONS

- 4.0 Board of County Commissioners' Brownfields Actions. County staff shall prepare agenda items, hearing materials, maps and resolutions for Board of County Commissioners consideration as a part of the request for a Brownfields Community Redevelopment Project designation or for assistance related to a Brownfields Community Redevelopment Project.

- 4.1 Filings with Federal and State Agencies. Board actions for a Brownfields designation under the Florida Brownfields Redevelopment Act shall be filed with the Florida Department of Environmental Protection in compliance with the Florida Brownfields Redevelopment Act. The county may prepare and file project applications for Federal and State assistance in conjunction with pending and approved Brownfields Community Redevelopment Projects which intend to use the Board's programs.

- 4.2 Brownfields Incentives. The following constitute the recognized incentives available for Brownfields Community Redevelopment Program Projects under the Lee County Brownfields Community Redevelopment Program:

4.2.1 Administrative Incentives

- No Brownfields application or review fee is charged for projects submitting to qualify for assistance under the Board's Brownfields Community Redevelopment Program.

4.2.2 Regulatory Incentives

- County staff assistance will be provided to qualify as a Brownfield in FDEP regulatory and permitting requirements for the Brownfields project.
- A County staff recommendation to the Board of County Commissioners concerning a Board action for Brownfields Community Redevelopment Project. The recommendation will be made within a target of 30 days from a complete Brownfields Project Application.
- The county may enact institutional controls such as those related to restrictive zoning and land use on property use or access to eliminate or minimize exposure to contaminants and to assist in the risk-based corrective actions necessary for the project.

4.2.3 Assistance Incentives

- County staff will take actions and assist applicants to obtain grants, loans, and other assistance for qualified Brownfields projects.

AC-9-1 (Continued)

- County staff will provide a county staff-assisted, priority-expedited process to obtain county permits for a qualified Brownfields project.

4.2.4 Financial Incentives

- This County policy and program may enable business and property owners to qualify for government tax treatments and financial programs.

5. BROWNFIELDS PROGRAM ADMINISTRATION

5.0 County Manager Responsibilities. The County Manager is directed to establish and assign responsibilities to carry out the Brownfields Community Redevelopment Policy as a part of the County Manager's responsibilities. The County Manager shall make arrangements for duties of agencies of the county government to undertake program responsibilities through the county's budget process, sufficient to carry out the Board's policy.

5.1 Joint Projects and Programs. The County Manager may develop joint projects and programs with State agencies and other local government agencies as needed to carry out the Board's Brownfields Community Redevelopment Program.

5.2 Procedures and Sample Documents. The County Manager shall establish and use administrative procedures to carry out the Board's Brownfields Community Redevelopment Policy.

AC-9-1 (Continued)

**LEE COUNTY BROWNFIELDS COMMUNITY REDEVELOPMENT PROGRAM
QUALIFICATION PROCEDURES FOR OBTAINING ASSISTANCE**

Brownfields Definition: Brownfields are abandoned, idled industrial and/or commercial facilities/sites where expansion or redevelopment is complicated by real or perceived environmental contamination.

Lee County Brownfields Community Redevelopment Program: It is the policy of the Board of County Commissioners to provide assistance and incentives to public and private land owners and businesses to facilitate the environmental cleanup and reuse of contaminated urban property. Qualifying Brownfields Community Redevelopment Program projects will be eligible to receive administrative, technical assistance, and financial incentives appropriate to the needs of the community through a program of community brownfields designations.

Program Qualifications: Qualifying Brownfields Project must meet the minimum requirements of the applicable designation and assistance guidelines under the Federal, State or local program for which the project is seeking to qualify. It is not the intent of the Board of County Commissioners to establish any further extent of requirements for qualifications other than those of the Brownfields Community Redevelopment Program policy and existing Brownfields laws and rules. Brownfields Projects must meet the basic definition and intent of brownfields redevelopment and reuse.

Brownfields Designation Process:

Brownfields Preapplication Meeting

The Brownfields Project Sponsor shall meet with county staff and other Brownfields interested agencies to discuss the Brownfields redevelopment project applications and compliance with the county program qualifications.

Application for Brownfields Designation

The county will provide assistance to a Brownfields Project Sponsor who completes a Brownfields Community Redevelopment Project Application (attached) identifying the project site, the scope of the proposed brownfields project, and site/project information to establish qualification for assistance under the Florida Brownfields Redevelopment Act or for County Brownfields Redevelopment Program assistance.

Documentation Requirements for Brownfield Area Designation

The following documentation to the Lee County Board of County Commissioners shall be required to qualify for designation as a Brownfield Area.

1. Project application documentation which includes, at a minimum, the following:
 - A completed Application for Brownfields Designation.
 - Zoning Verification Letter from the county stating that the proposed project is a permissible use.

AC-9-1 (Continued)

- Letter from the Lee County Community Development/Planning stating that the proposed brownfield area is consistent with Lee County's Comprehensive Plan.
- Proof that sufficient resources are available to the applicant to implement and complete a rehabilitation and redevelopment plan.

2. Documentation of public notice

The Brownfields Project Sponsor must meet the requirements of the Florida Brownfields Redevelopment Act regarding public notification. Specifically, notice of the proposed rehabilitation of the brownfield area must be made in a newspaper of general circulation in the area and notice must be posted in the affected area. The phone number of the County's Brownfields Coordinator shall be included in the notifications so that interested parties may provide comment to the county on the proposed application. Said notifications shall be posted within 5 working days from the submittal of the Brownfields Designation Application. A copy of the newspaper advertisement and a photo of the posted notification(s) shall be provided.

3. Staff report with recommendation of approval

County staff will review the Brownfield Project Sponsor's Application and consult with any Federal, State and local agencies as to any Brownfields requirements which may be part of the approval of the Brownfields Project. Upon establishing that the Brownfields Project Sponsor has an application with sufficient information required to qualify for designation and any assistance under the Brownfields Community Redevelopment Program, county staff will schedule an agenda item with the Board of County Commissioners and prepare a staff report recommending approval of the Brownfield Project Sponsor's Application. The agenda item shall be scheduled within 30 days of the determination of application sufficiency.

Resolution by the Lee County Board of County Commissioners

Upon submittal of the required documentation, the Lee County Board of County Commissioners shall pass a resolution designating the proposed site a Brownfield Area under the Florida Brownfields Redevelopment Act.

Filings with Federal and State Agencies: Board actions for a Brownfields designation under the Florida Brownfields Redevelopment Act shall be filed with the Florida Department of Environmental Protection in compliance with the Florida Brownfields Redevelopment Act.

Brownfield Site Rehabilitation Agreement: The designation of a Brownfield Area by the County entitles the applicant to negotiate a brownfield site rehabilitation agreement with the Florida Department of Environmental Protection or an approved local pollution control program. The specific requirements of the agreement are outlined in s. 376.80(5), Florida Statutes, and s. 62-785, Florida Administrative Code.

Brownfield Advisory Committee: A Brownfields Advisory Committee of residents or property owners shall be established for the purposes of improving public participation and receiving public input on rehabilitation and redevelopment of the brownfield areas. The Board of County Commissioners may temporarily act as an interim Brownfields Advisory Committee in the absence of community residents or property owners forthcoming to fulfill this requirement.

AC-9-1 (Continued)

**LEE COUNTY BROWNFIELDS COMMUNITY REDEVELOPMENT PROGRAM
APPLICATION FOR BROWNFIELDS DESIGNATION**

Complete this form to request designation by Lee County as a Brownfield Area. It is important to complete all applicable sections and attach all necessary information. It is required that a Brownfields Preapplication Meeting be held before submitting this application. If you have any questions concerning completion of this application or wish to schedule a Preapplication Meeting, please call _____ and ask to speak to the Brownfields Coordinator.

PROPERTY INFORMATION

Property Name _____

Address _____

City _____ State _____ Zip Code _____

Property Size (acres/square feet) _____ Parcel Number(s) _____

Attach a map showing location of property.

PROPERTY DESCRIPTION

Briefly describe property (vacant land, unoccupied, etc.) _____

Zoning _____

Future Land Use Designation _____

Is property located within one or more of the following? (Check all that apply)

___ Orient/Eastlake Brownfields Assessment Pilot Area

___ Community Redevelopment Area

___ Enterprise Zone

___ Empowerment Zone

Located within one-half mile of an existing major street? ___ Yes ___ No

Public street access? ___ Yes ___ No

Existing public water and sewer distribution lines? ___ Yes ___ No

Outside flood plain area? ___ Yes ___ No

Describe all outstanding property taxes due on the property _____

APPLICANT INFORMATION

Name _____

Address _____

City _____ State _____ Zip Code _____

Phone _____ Fax _____ E-Mail _____

Interest in Property _____

AC-9-1 (Continued)

CURRENT PROPERTY OWNER (if different from applicant)

Name(s) _____ Title _____
Organization _____
Mailing Address _____
City _____ State _____ Zip Code _____
Telephone _____ Fax _____ E-Mail _____

(A) Indicate the legal form of business by providing the date founded.

Legal Form of Business	(Check one)	Date Founded
Individual		
Sole Partnership		
General Partnership (attach partnership agreement)		
Limited Liability Partnership (attach partnership agreement and certificate of limited partnership)		
Limited Liability Company (attach articles of organization)		
Corporation (attach articles of incorporation)		
S Corporation (attach articles of incorporation)		
Joint Venture (attach joint venture agreement)		
Trustee		
Other (describe)		

(B) If an out-of-state entity, provide the date the entity registered to do business in the State of Florida: _____

(C) If a Trustee, describe: _____

OTHER CONTACTS

(A) Consultant:

Name(s) _____ Title _____
Organization _____
Address _____
City _____ State _____ Zip Code _____
Telephone _____ Fax _____ E-Mail _____

(B) Other (e.g., Project Manager, Attorney):

Name(s) _____ Title _____
Organization _____
Address _____
City _____ State _____ Zip Code _____
Telephone _____ Fax _____ E-Mail _____

AC-9-1 (Continued)

Name(s) _____ Title _____

Organization _____

Address _____

City _____ State _____ Zip Code _____

Telephone _____ Fax _____ E-Mail _____

ENVIRONMENTAL STATUS

Brief description of the nature and geographical extent of contamination by hazardous substances and/or pollutants, if known: _____

Has a site assessment been done? _____ Yes _____ No

Brief description of any previous or current remedial action: _____

If remediation is needed, will you agree to enter into a Brownfield Site Rehabilitation Agreement with the Florida Department of Environmental Protection (or authorized designee)? _____ Yes _____ No

Based on the information known to the applicant, check all categories of contamination that are known to exist, or suspected to exist, at, in, on or beneath the property:

Contaminants	Soil	Groundwater	Sediment	Surface Water
<i>(check all that apply)</i>				
Solvents				
Metals				
Pesticides/Herbicides				
PCB				
Petroleum				

CURRENT PROPERTY USE

(A) Indicate all current property uses by providing the current site status.

Current Property Use <i>(check all that apply)</i>	Current Site Status		
	Active	Inactive	Abandoned
Residential			
Commercial			
Retail			
Office Space			
Warehousing			
Industrial			
Manufacturing			
Other <i>(describe)</i>			

AC-9-1 (Continued)

(B) Provide the property's current zoning classification and describe the uses that are allowed under this classification: _____

(C) Are any requests for zoning variances, special exceptions or reclassification pending? If yes, explain.
Yes _____
No _____

(D) Has the property been subdivided? If yes, explain and provide the date of the subdivision.
Yes _____
No _____

(E) Are there any recorded easements on the property? If yes, explain and provide a map with all easements clearly marked.
Yes _____
No _____

(F) Describe current operations on the property including the types of activities that are performed, the buildings or locations where these activities are performed and the number of on-site employees.

(G) Based on the information known to the applicant, are there currently any hazardous substances used, generated, treated stored, disposed or discharged at the property? If yes, explain.
Yes _____
No _____

(H) Based on information known to the applicant, is there currently any oil used, generated, treated, stored, disposed or discharged at the property? If yes, explain. *(Oil means oil of any kind and in any liquid form including petroleum, petroleum by products, fuel oil, sludge containing oil or oil residues, oil refuse, oil mixed with or added to or otherwise contaminating soil, waste or any other liquid or solid media, crude oils, aviation fuel, gasoline, kerosene, light and heavy fuel oils, diesel motor fuels, asphalt and regardless of specific gravity, every other non-edible, nonsubstituted liquid petroleum fraction unless that fraction is specifically identified as a hazardous substance under CERCLA.)*
Yes _____
No _____

AC-9-1 (Continued)

PREVIOUS PROPERTY USE

(A) Provide all the information known to the applicant regarding previous owners of the property, entities who operated at the property, use of the property and the dates of transfer of ownership of the property. (This chronicle of the property's ownership, occupancy, use and development must begin with the property's first developed use or 1940, whichever is earlier, and continuing at five year intervals to the present. Sources can include interviews, title searches, and databases.)

(B) A title search must be conducted on this property. Have the results of the title search (e.g., abstract) for this property been included with this application?

Yes _____
No _____

(C) Based on the information known to the applicant, have there ever been any hazardous substances used, generated, treated, stored, disposed or discharged at the property? If yes, explain.

Yes _____
No _____

(D) Based on information known to the applicant, has any oil been used, generated treated, stored, disposed or discharged at the property? If yes, explain.

Yes _____
No _____

FUTURE PROPERTY USE

(A) Indicate the intended future use of the property. (*Check one.*)

_____ **Residential**

"Residential purposes" is defined as unrestricted use of property that allows exposure and access by all populations including infant, children, elderly and infirm populations. Residential purposes includes, but is not limited to, education facilities, farms and other agricultural facilities, health care and recreation including assisted living facilities, day care facilities, hospital and other health care facilities, multi-unit buildings, parks, playgrounds and other recreational facilities and areas, and single and multi-family dwellings.

_____ **Limited Residential**

"Limited Residential purposes" is defined as unrestricted use of property, except use of groundwater, that allows exposure and access by all populations including infant, children, elderly and infirm populations. Residential purposes includes, but is not limited to, education facilities, farms and other agricultural facilities, health care and recreation including assisted living facilities, day care facilities, hospital and other health care facilities, multi-unit residential buildings, parks, playgrounds and other recreational facilities and areas, and single and multi-family dwellings but excludes use of the groundwater.

AC-9-1 (Continued)

Commercial

"Commercial purposes" is defined as use of property in a manner that is designed or intended for use by the general public consistent with typical use by a worker and other expected users including a customer, patron or visitor. Commercial purposes allows access to the property and duration consistent with a typical business day. Commercial purposes includes, but is not limited to, use of the property for automobile service and gasoline stations, hotels, medical or dental offices, maritime uses open to the public, motels, office space, refuse yards, religious institutions, restaurants, retail business and shopping facilities. Commercial purposes does not include "limited residential purposes" or "residential purposes."

Industrial

"Industrial purposes" is defined as use of property in a manner that is primarily designed or intended for use by workers over the age of 18 and other expected users. Industrial purposes allows access to the property at a frequency and duration consistent with a typical business day.

Industrial purposes includes, but is not limited to, use of property for assembly facilities, blast furnaces, chemical and other material plants, railroad switching yards, manufacturing facilities, industrial maritime facilities including, but not limited to, non-recreational boat repair, freight and passenger ship terminals metal working shops, oil refineries, sand and gravel processing facilities, and warehousing facilities and includes accessory facilities inherently necessary to such uses including office space and laboratories. Industrial purposes does not include "commercial purposes."

- (B) Based on future use of the property, please describe any anticipated physical changes to the property (e.g., building demolition, building expansion, paving, changes in site operations, etc.)

- (C) Will a day-care facility be located on the property?

Yes _____
No _____

- (D) If known, describe the number and types of businesses that will be operating at the property after redevelopment.

- (E) If known, provide the estimated cost of property redevelopment.

- (F) If known, provide the approximate increase in the property tax after redevelopment.

Attach further illustrative or graphic information, as appropriate.

How many new permanent full-time or part-time jobs will the project create after remediation? _____

AC-9-1 (Continued)

FINANCIAL RESOURCES

Reasonable assurances must be provided by the applicant that sufficient financial resources are available to the applicant to implement and complete a rehabilitation agreement and redevelopment plan. **Attach a statement, as well as any other appropriate information, outlining the financial resources available to the applicant for rehabilitation and redevelopment.** This statement can include financial resources the applicant anticipates to obtain (private loans, equity and assistance) through designation as a Brownfield Area. In short, describe your general financial plan for your project.

SERVICES TO BE PROVIDED

Have you had a Brownfields Preapplication Meeting? Yes No (It is required that applicants have a Preapplication Meeting. Please call _____ for more information.)

In order to better assist you, please check the type of designation you are requesting and the type of assistance/incentives (check all that apply) you are seeking through this designation:

Type of Designation: Several parcels Single parcel

Type of Assistance/Incentives:

- Regulatory Assistance (aid for meeting government agency permitting requirements)
- Tax Credit/Exemptions due to Brownfield Area Designation
- Other:

Please describe in greater detail the services you would like to receive as a participant in the Brownfields Program (Optional): _____

What are your goals with respect to the property (i.e., sale, redevelopment, business expansion, etc.)?

Attach Phase I and/or Phase II Environmental Reports, if available. An environmental Phase I and Phase II site assessment that: (1) includes established Phase I and Phase II site assessment standards; (2) follows principles established by the American Society for Testing and Materials; and (3) demonstrates that the assessment has adequately investigated all potential sources and areas of contamination.

- Phase I assessment enclosed
- Phase II assessment enclosed

(Please note, although not part of the application package, an outline of the Response Action Plan is included as Appendix III of the application.)

AC-9-1 (Continued)

A summary description of the proposed voluntary cleanup project including the following information:

1. Source(s) of contamination;
2. Exposure pathways;
3. Need for additional investigation (e.g., sampling), if applicable;
4. Proposed cleanup criteria;
5. Proposed remedial alternatives;
6. Map depicting areas of the property to be remedied; and
7. Future land use of the property.

The contents of this application shall be considered public records of the County. The undersigned affirms that the information contained in this application is true and accurate.

STATEMENT OF CERTIFICATION

"I certify under penalty of law that the information provided in this application, is to the best of applicant's knowledge and belief, accurate and complete. Applicant is aware that there are significant penalties for falsifying any information required.

I certify I am an authorized representative of the applicant.

I certify that all information on environmental conditions relevant to the property and known to the applicant is provided as part of this application."

Printed Name _____ **Title** _____

Signature _____ **Date** _____

Applicant Contacted on: _____

Date Information Received to Complete Application (if applicable): _____

Signature of Reviewer: _____ Date: _____

BOCC HEARING DATE FOR DESIGNATION OF SITE AS A BROWNFIELD AREA: _____

**LEE COUNTY
Brownfield (BF) Area Designation Process
Individual Requests**

BF Area Designation Process

Local Government Designates
Listed Areas or Areas Outside Listed

Individual (PRFBSR) Requests
Designation of Potential BF Area

Agrees to Rehabilitate and
Redevelop BF Site

Complies with Criteria for Proposed BF
Site

At Least 10 New Permanent Jobs
(Full-time or Part-time)

Redevelopment Consistent with Local
Comprehensive Plan Permittable under Local
Land Development Regulations

Notice Provided to Neighbors and Nearby
Residents Opportunity to Comment and
Suggest on Rehabilitation

Reasonable Assurance Sufficient Financial
Resources to Implement and Complete the
BSRA and Redevelopment Plan

Local Government Designation and
Resolution Adoptions Process Begins

*Designation of Area and identification of
Person Responsible for Brownfield Site
Rehabilitation (PRFBSR) simply entitles the
identified person to negotiate a Brownfield
Site Rehabilitation Agreement (BSRA) with
FDEP.

*Notification of PRFBSR to FDEP

** Advisory Committee includes residents
within and adjacent to BF area, business
operations within BF, and others deemed
appropriate.

** Advisory Committee Established to
Review and Make Recommendations on
BSRA

PRFBSR and FDEP Negotiate BSRA

AC-9-1 (Continued)

s. 376.80, F.S. (2001), Brownfield program administration process.

- (1) A local government with jurisdiction over the brownfield area must notify the department of its decision to designate a brownfield area for rehabilitation for the purposes of ss.376.77-376.85. The notification must include a resolution by the local government body, to which is attached a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or alternatively a less-detailed map accompanied by a detailed legal description of the brownfield area. If a property owner within the area proposed for designation by the local government requests in writing to have his or her property removed from the proposed designation, the local government shall grant the request. For municipalities, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 166.041, except that the notice for the public hearings on the proposed resolution in accordance with the procedures outlined in s.166.041(3)(c)2. For counties, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 125.66, except that the notice for the public hearings on the proposed resolution shall be in the form established in s.125.66(4)(b)2.

- (2)
 - (a) If a local government proposes to designate a brownfield area that is outside community redevelopment areas, enterprise zones, empowerment zones, closed military bases, or designated brownfield pilot project areas, the local government must conduct at least one public hearing in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. Notice of the public hearing must be made in a newspaper of general circulation in the area and the notice must be at least 16 square inches in size, must be in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing. In determining the areas to be designated, the local government must consider:
 1. Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
 2. Whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage;
 3. Whether the area has potential to interest the private sector in participating in rehabilitation; and
 4. Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

 - (b) A local government shall designate a brownfield area under the provisions of this act provided that:
 1. A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site;
 2. The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 10 new permanent jobs, whether full-time or part-time, which are not associated with the implementation of the rehabilitation agreement or an agreement, between the person responsible for site rehabilitation and the local government with jurisdiction, which contains terms for the redevelopment of the brownfield site or brownfield area;
 3. The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations;

AC-9-1 (Continued)

4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated, and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subsection must be made in a newspaper of general circulation in the area, at least 16 square inches in size, and the notice must be posted in the affected area; and
 5. The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.
- (c) The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield site rehabilitation agreement with the department or approved local pollution control program.
- (3) When there is a person responsible for the brownfield site rehabilitation, the local government must notify the department of the identity of that person. If the agency or person who will be responsible for the coordination changes during the approval process specified in subsections (4), (5), and (6), the department or the affected approved local pollution control program must notify the affected local government when the change occurs.
 - (4) Local governments or persons responsible for rehabilitation and redevelopment of brownfield areas 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. Such advisory committee should include residents within or adjacent to the brownfield area, businesses operating within the brownfield area, and others deemed appropriate. The person responsible for brownfield site rehabilitation must notify the advisory committee of the intent to rehabilitate and redevelop the site before executing the brownfield site rehabilitation agreement, and provide the committee with a copy of the draft plan for site rehabilitation which addresses elements required by subsection (5). This includes disclosing potential reuse of the property as well as site rehabilitation activities, if any, to be performed. The advisory committee shall review the proposed redevelopment agreement required pursuant to paragraph (5)(i) and provide comments, if appropriate, to the board of the local government with jurisdiction over the brownfield area. The advisory committee must receive a copy of the executed brownfield site rehabilitation agreement. When the person responsible for brownfield site rehabilitation submits a site assessment report or the technical document containing the proposed course of action following site assessment to the department or the local pollution control program for review, the person responsible for brownfield site rehabilitation must hold a meeting or attend a regularly scheduled meeting to inform the advisory committee of the findings and recommendations in the site assessment report or the technical document containing the proposed course of action following site assessment.
 - (5) The person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement with the department or an approved local pollution control program if actual contamination exists at the brownfield site. The brownfield site rehabilitation agreement must include:
 - (a) A brownfield site rehabilitation schedule, including milestones for completion of site rehabilitation tasks and submittal of technical reports and rehabilitation plans as agreed upon by the parties to the agreement;
 - (b) A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists who are registered in accordance with the requirements of chapter 471 or chapter 492, respectively. Submittals provided by the person responsible for the brownfield site rehabilitation must be signed and sealed by a professional engineer registered under chapter 471, or a professional geologist registered under chapter 492, certifying that the submittal and associated work comply with the law and rules of the department and those governing the profession. In addition, upon completion

AC-9-1 (Continued)

of the approved remedial action, the department shall require a professional engineer registered under chapter 471 or a professional geologist registered under chapter 492 to certify that the corrective action was, to the best of his or her knowledge, completed in substantial conformance with the plans and specifications approved by the department;

- (c) A commitment to conduct site rehabilitation in accordance with an approved comprehensive quality assurance plan under department rules;
 - (d) A commitment to conduct site rehabilitation consistent with state, federal, and local laws and consistent with the brownfield site contamination cleanup criteria in s.376.81, including any applicable requirements for risk-based corrective action;
 - (e) Time frames for the department's review of technical reports and plans submitted in accordance with the agreement. The department shall make every effort to adhere to established agency goals for reasonable Time frames for review of such documents.
 - (f) A commitment to secure site access for the department or approved local pollution control program to all brownfield sites within the eligible brownfield area for activities associated with site rehabilitation;
 - (g) Other provisions that the person responsible for brownfield site rehabilitation and the department agree upon, that are consistent with ss.376.77-376.85, and that will improve or enhance the brownfield site rehabilitation process;
 - (h) A commitment to consider appropriate pollution prevention measures and to implement those that the person responsible for brownfield site rehabilitation determines are reasonable and cost-effective, taking into account the ultimate use or uses of the brownfield site. Such measures may include improved inventory or production controls and procedures for preventing loss, spills, and leaks of hazardous waste and materials, and include goals for the reduction of releases of toxic materials; and
 - (i) Certification that an agreement exists between the person responsible for brownfield site rehabilitation and the local government with jurisdiction over the brownfield area. Such agreement shall contain terms for the redevelopment of the brownfield area.
- (6) Any contractor performing site rehabilitation program tasks must demonstrate to the department that the contractor:
- (a) Meets all certification and license requirements imposed by law; and
 - (b) Has obtained approval for the comprehensive quality-assurance plan prepared under department rules.
- (7) The contractor must certify to the department that the contractor:
- (a) Complies with applicable OSHA regulations.
 - (b) Maintains workers' compensation insurance for all employees as required by the Florida Workers' Compensation Law.
 - (c) Maintains comprehensive general liability and comprehensive automobile liability insurance with minimum limits of at least \$1 million per claim and \$1 million annual aggregate, sufficient to protect it from claims for damage for personal injury, including accidental death, as well as claims for property damage which may arise from performance of work under the program, designating the state as an additional insured party.

AC-9-1 (Continued)

- (d) Maintains professional liability insurance of at least \$1 million per occurrence and \$1 million annual aggregate.
 - (e) Has the capacity to perform or directly supervise the majority of the work at a site in accordance with s.489.113(9).
- (8) Any professional engineer or geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least \$1 million.
- (9) During the cleanup process, if the department or local program fails to complete review of a technical document within the time frame specified in the brownfield site rehabilitation agreement, the person responsible for brownfield site rehabilitation may proceed to the next site rehabilitation task. However, the person responsible for brownfield site rehabilitation does so at its own risk and may be required by the department or local program to complete additional work on a previous task. Exceptions to this subsection include requests for "no further action," "monitoring only proposals," and feasibility studies, which must be approved prior to implementation.
- (10) If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the department shall allow 90 days for the person responsible for brownfield site rehabilitation to return to compliance with the provision at issue or to negotiate a modification to the brownfield site rehabilitation agreement with the department for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the brownfield site rehabilitation agreement and a modification cannot be negotiated, the immunity provisions of s.376.82 are revoked.
- (11) The department is specifically authorized and encouraged to enter into delegation agreements with local pollution control programs approved under s.403.182 to administer the brownfield program within their jurisdictions, thereby maximizing the integration of this process with the other local development processes needed to facilitate redevelopment of a brownfield area. When determining whether a delegation pursuant to this subsection of all or part of the brownfields program to a local pollution control program is appropriate, the department shall consider the following. The local pollution control program must:
- (a) Have and maintain the administrative organization, staff, and financial and other resources to effectively and efficiently implement and enforce the statutory requirements of the delegated brownfields program; and
 - (b) Provide for the enforcement of the requirements of the delegated brownfields program, and for notice and a right to challenge governmental action, by appropriate administrative and judicial process, which shall be specified in the delegation.
- The local pollution control program shall not be delegated authority to take action on or to make decisions regarding any brownfield site on land owned by the local government. Any delegation agreement entered into pursuant to this subsection shall contain such terms and conditions necessary to ensure the effective and efficient administration and enforcement of the statutory requirements of the brownfields program as established by the act and the relevant rules and other criteria of the department.
- (12) Local governments are encouraged to use the full range of economic and tax incentives available to facilitate and promote the rehabilitation of brownfield areas, to help eliminate the public health and environmental hazards, and to promote the creation of jobs and economic development in these previously run-down, blighted, and underutilized areas.

History.- s. 4, ch. 97-277; s.3, ch. 98-75; s. 11, ch. 2000-317.