



Key Brownfield Definitions




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The 2017 Florida Statutes

Title XXVIII	Chapter 376	View Entire Chapter
NATURAL RESOURCES; CONSERVATION, RECLAMATION, AND USE	POLLUTANT DISCHARGE PREVENTION AND REMOVAL	
376.79 Definitions relating to Brownfields Redevelopment Act.—As used in ss. 376.77-376.85, the term:		
(1) “Additive effects” means a scientific principle that the toxicity that occurs as a result of exposure is the sum of the toxicities of the individual chemicals to which the individual is exposed.		
(2) “Antagonistic effects” means a scientific principle that the toxicity that occurs as a result of exposure is less than the sum of the toxicities of the individual chemicals to which the individual is exposed.		
(3) “Background concentration” means the concentration of contaminants naturally occurring or resulting from anthropogenic impacts unrelated to the discharge of pollutants or hazardous substances at a contaminated site undergoing site rehabilitation.		
(4) “Brownfield sites” means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.		
(5) “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.		

Designation Criteria When Private Party is Applicant –Objective/Mandatory

(c) *Brownfield area designation proposed by persons other than a governmental entity.*—For designation of a brownfield area that is proposed by a person other than the local government, the local government with jurisdiction over the proposed brownfield area shall provide notice and adopt a resolution to designate the brownfield area pursuant to paragraph (1)(c) if, at the public hearing to adopt the resolution, the person establishes all of the following:

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 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement does not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks.
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.
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 pursuant to paragraph (1)(c), 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 subparagraph must be posted in the affected area.
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 of the brownfield site.

Designation Criteria When Private Party is Applicant –Objective/Mandatory

§ 376.80(2), Florida Statutes

(c) Brownfield area designation proposed by persons other than a governmental entity.

For designation of a brownfield area that is proposed by a person other than the local government, the local government with jurisdiction over the proposed brownfield area shall provide notice and adopt a resolution to designate the brownfield area pursuant to paragraph (1)(c) if, at the public hearing to adopt the resolution, the person establishes all of the following:

“Shall” Means “Must”

Neal v. Bryant, 149 So.2d 529 (Fla. 1962)

Upon a full consideration of the provisions of the statute in question, it is our determination that the provisions thereof regarding a preliminary investigation as to probable cause are mandatory in nature. This construction is compelled by the use of the word ‘shall’ in the statute in question which, according to its normal usage, has a mandatory connotation. 30 Fla. Jurisprudence, Statutes § 6.

“Shall” Means “Must”

Concerned Citizens of Putnam County for Responsive Government, Inc., v. St. Johns River Water Management District, 622 So. 2nd 520, 523 (Fla. 5th DCA 1993)

Although there is no fixed construction of the word “shall,” it is normally meant to be mandatory in nature. *S.R. v. State*, 346 So.2d 1018 (Fla.1977), *citing Neal v. Bryant*, 149 So.2d 529 (Fla.1962). The interpretation of the word “shall” depends upon the context in which it is found and upon the intent of the legislature as expressed in the statute. *State v. Goodson*, 403 So.2d 1337, 1339 (Fla.1981); *S.R.*, 346 So.2d at 1019, *citing White v. Means*, 280 So.2d 20 (Fla. 1st DCA1973). Where a property right, rather than an “immaterial matter,” or a matter of “substance” rather than a “matter of convenience” is involved, the word “shall” will be strictly construed. *Neal*, 149 So.2d at 532.

Designation Criteria When Private Party is Applicant – Objective/Mandatory

§ 376.80(2)(c), Florida Statutes

- 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 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement does not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. [420.0004](#) or the creation of recreational areas, conservation areas, or parks.*
- 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.*
- 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 pursuant to paragraph (1)(c), 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 subparagraph must be posted in the affected area.*
- 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 of the brownfield site.*

Designation Criteria When Local Government is Applicant – Subjective/Discretionary

(2)(a) *Local government-proposed brownfield area designation outside specified redevelopment areas.*—If a local government proposes to designate a brownfield area that is outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area, the local government shall provide notice, adopt the resolution, and conduct public hearings pursuant to paragraph (1)(c). At a public hearing to designate the proposed brownfield area, 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) *Local government-proposed brownfield area designation within specified redevelopment areas.*—Paragraph (a) does not apply to a proposed brownfield area if the local government proposes to designate the brownfield area inside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area and the local government complies with paragraph (1)(c).

Brownfields & Property Values

- “Estimating the Impacts of Brownfield Remediation on Housing Property Values,” Nicholas Institute for Environmental Policy Solutions at Duke University, Working Paper EE 12-08, August 2012.
 - “The analysis finds evidence of large increases in property values accompanying cleanup, ranging from 5.1% to 12.8%”
- “Using Spatial Regression to Estimate Property Tax Discounts from Proximity to Brownfields: A Tool for Local Policy-Making,” Journal of Environmental Assessment and Management (University of Cincinnati), January 2013
 - Assesses the discount in property values due to proximity to brownfields
 - Study included 6,800 properties within 2,000 feet of a brownfield
 - Concludes that City of Cincinnati can recapture \$2,262,569 in annual revenue “that could presumably be recovered following brownfield cleanup.”
- The Effect of Voluntary Brownfield Programs Program on Nearby Property Values: Evidence from Illinois,” Institute for Environmental Science and Policy, University of Illinois , August 2012
 - “Sales prices increase by about 1 percent when a brownfield located 0.25 miles away is certified. Overall, the program has increased the average value of all properties within 1.5 miles of certified sites by about 2 percent. The results provide some evidence of larger effects, of about 4 – 5 percent.”

Final Points

- ◉ Statute does not have a cutoff for submitting a designation request
 - Applications were first submitted in December 2016; delay in bringing items before Commission not due to any action by applicant
- ◉ Unlike other economic development statutes, there is no requirement here to demonstrate that “but for” the designation project would not move forward
- ◉ We are not seeking tax credits, which has a statewide cap; we are seeking the state sales tax rebate on construction materials
- ◉ Ample evidence submitted to support finding of actual and/or perceived contamination
 - Phase I/II documentation
 - Regulatory documentation
 - Scientific Literature, Academic Literature, Media Coverage (over a period of decades)
 - Affidavits
- ◉ Law must be applied as exists in statute; disagreement as to policy can be addressed in upcoming legislative session (we’ll help!)
- ◉ Fundamental fairness & equal protection – Why treat this site differently than businesses in Orange County’s newest brownfield area (350 acres!), all of whom can now theoretically seek the very same incentive that the applicant seeks here without having to demonstrate either actual or perceived contamination