

Development of Brownfield Sites

by Warren Kirshenbaum

The idea of taking on a brownfield site for redevelopment can be intimidating, especially for developers who don't have experience remediating contaminated land. However, the term "brownfield" when describing a property does not need to conjure up the daunting image of a Superfund level cleanup. There is no one "face" of a brownfield site. In fact, many eligible brownfield sites are actually old factories or mills, common to towns and cities across Massachusetts.

As a developer, these sites carry promise, both as residential, retail, mixed-use, or industrial projects. There is a procedure to follow, so let's navigate through the process.

As a developer taking on a brownfield redevelopment, the most important step you can take to ensure success is to build a knowledgeable brownfield redevelopment team. You will need to engage a licensed site professional (LSP), who is a geotechnical expert mandated by the commonwealth to act on behalf of the DEP to develop, implement, and execute a remediation plan. The LSP will engage a testing company, soil disposal contractors, demolition experts (if necessary), and should work together with the general contractor, architect, engineers, and other site professionals to coordinate the remediation element of the project.

As there are available tax credits for the remediation work, bringing in your tax credit consultant at this stage is helpful in terms of advice on setting up the remediation expenditures in order to maximize the available tax credits. The tax credit referred to here is the Massachusetts Brownfields Tax Credit (BTC), which is a transferable tax credit that covers either 25% or 50% of your eligible remediation expenses. The BTC is limited to commercial sites in economically distressed areas (2/3 of Massachusetts), where the claimant did not cause the contamination and spends more than 15% of the property's assessed value on remediation.

The BTC is only available post-remediation, i.e., when a Permanent Solution or Remedy Operation Status has been achieved, and cannot, therefore, assist with predevelopment funding.

Financing sources such as grants, state-backed low-interest funding, or environmental insurance that could satisfy a construction lender are available. Obtaining bridge financing against the tax credits for predevelopment use is a difficult proposition, as the commonwealth's approval of the BTC is a long process, and an inexact science. However, prefunding of state tax credits could be possible if you engage an inventive consultant.

If the project is eligible for other types of tax credits, for example, if you are performing an adaptive reuse of a historic property or are building multifamily housing with an affordable component, these tax credits may be used in conjunction with the BTC, resulting in maximum tax credit savings. However, incorporating your tax credit equity into the capital stack while respecting all the covenants and provisions of the transaction's documentation is certainly a challenge. That is why it is so important to have a knowledgeable tax credit consultant on your team.

The bottom line for brownfield redevelopment is that when structured properly it is an attainable and financially rewarding endeavor. The key to success for brownfield sites is putting together a team of knowledgeable experts to navigate the redevelopment landscape with you.

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