

THE LIFECYCLE OF THE
VOLUNTARY CLEANUP TAX CREDIT
("VCTC")
(FLORIDA FOCUS)

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A VCTC STAR IS BORN!



- After passage of the Brownfields Redevelopment Act in 1997, the Florida Legislature wanted to create a strong economic incentive to encourage participation in the Brownfields Program.
- In 1998, they created the Voluntary Cleanup Tax Credit (“VCTC”; sometimes called “Vic-Tic”)
- See Section 376.30781, Florida Statutes (F.S.)

WHICH CONTAMINATED SITES QUALIFY FOR VCTC?

- Per Section 376.30781(3)(a), F.S.: A credit in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites is allowed pursuant to s. [220.1845](#):
- 1. A drycleaning-solvent-contaminated site eligible for state-funded site rehabilitation under s. [376.3078](#)(3);
- 2. A drycleaning-solvent-contaminated site at which site rehabilitation is undertaken by the real property owner pursuant to s. [376.3078](#)(11), if the real property owner is not also, and has never been, the owner or operator of the drycleaning facility where the contamination exists; or
- ➔ • 3. **A brownfield site in a designated brownfield area under s. [376.80](#).**

KEY DEFINITIONS FROM FLORIDA STATUTES:



- See Section 376.79, F.S.:
- (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.
- (Emphasis added.)

ENSURING A SUCCESSFUL LAUNCH IN THE “UNIVERSE OF REVITALIZATION”: UNDERSTANDING THE FLORIDA BROWNFIELDS PROCESS



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THE BROWNFIELDS CRITERIA:

- This panel assumes some knowledge of the Florida Brownfields Program, but if you want more details...
- See “Brownfields 101” presentation from 2018 Brownfields Conference for detailed description of all things Brownfields in Florida (definitions, statutory requirements, process flow chart, state versus federal programs, etc.) Here’s the link to the material on the FBA’s website:

<https://flba.memberclicks.net/assets/2018Conference/Presentations/Rush%20Presentation%20%281%29.pdf>

BROWNFIELDS PROCESS HIGHLIGHTS:

- Local Government designates a Brownfield Area
- An entity or individual decides to become the “Person Responsible for Brownfield Site Rehabilitation” (“PRFBSR”); i.e., the developer
- PRFBSR works with Local Government to get agreement on redevelopment plan (end use)
- PRFBSR must enter into a Brownfield Site Rehabilitation Agreement (“BSRA”) in order to be eligible for *most* Brownfields incentives, including VCTC
- PRFBSR negotiates a BSRA with one of six FDEP District Offices or with a Delegated Brownfields Program in Miami-Dade, Broward, or Hillsborough Counties

THE BSRA INCLUDES:

- Model BSRA template available at <https://floridadep.gov/waste/waste-cleanup/documents/model-brownfield-site-rehabilitation-agreement-bsra>
- Attachment A Local Government Resolution for the Brownfield Area and Map and Legal Description of the Brownfield Site
- Attachment B Brownfield Site Rehabilitation Schedule
- Attachment C Site Access Agreement
- Attachment D Certification of Redevelopment Agreement
- Attachment E Contractor Certification Form
- Attachment F Quality Assurance Certificate
- Attachment G Advisory Committee Members
- Attachment H Format for Submittal of Technical Documents
- Attachment I Publication of Notice *{Optional; delete if not published.}*



IMPORTANT RULES IN THE BROWNFIELDS UNIVERSE...

- The PRFBSR must enter into a BSRA (executed by all parties) by **December 31** of the year for which they plan to claim tax credits.
- To claim VCTC for work in 2019, get your proposed BSRA submitted ASAP (if you haven't already!)
- VCTC are available for site cleanup conducted during the calendar year in which the BSRA is executed, *even if the work is conducted prior to the execution of the BSRA or the designation of the brownfield area.*





NOW, HOW DO I GET THE VCTC?

- If the Brownfields process is “stormy,” don’t despair...
- Search for the rainbow and the VCTC reward!

THE UNIVERSE OF VCTC: AVOIDING ASTEROIDS IN THE VCTC APPLICATION PROCESS

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ORBITING THE PLANETS... WHICH WILL SUSTAIN VCTC LIFE?



<u>Type of VCTC</u>	<u>Amount</u>	<u>Application Period</u>	<u>Application Deadline</u>
Annual Site Rehabilitation VCTC	50% up to \$500K	Jan. 1 to Dec. 31 each year	January 31 st of the year following the year in which the work is done
Bonus VCTC for: <ul style="list-style-type: none"> • SRCO • Health Care Facility/Provider • Affordable Housing 	25% up to \$500K (can be stacked up to 100%)	Can include costs from multiple years	When the statutory requirements have been met (each Bonus type has different requirements)
Solid Waste VCTC	50% up to \$500K	Can include costs from a single year or multiple years	When the statutory requirements have been met

COMPLETING THE ORBIT AND LANDING SAFELY

VCTC Completeness “CARDS”:

- **C** – CPA Report
- **A** – Application Form and \$250 Non-Refundable Review Fee
- **R** – Receipts (Invoices and Proof of Payment by the Applicant)
- **D** – Documentation (BSRA/VCA, Contracts, Description of Site Rehabilitation Performed, PE/PG Memo re: Prorated Costs)
- **S** – Submitted On Time!



VCTC REVIEW CRITERIA

Costs claimed must be “integral to site rehabilitation” (means work that is necessary to implement the requirements of Chapter 62-780, F.A.C.)

“Site Rehabilitation” does not equal
“Site Redevelopment”

- “Site Rehabilitation” Includes **assessment** of contamination and **remediation** to achieve Cleanup Target Levels (see Ch. 62-777, F.A.C.); but can include conditional closure using Engineering Controls and/or Institutional Controls.

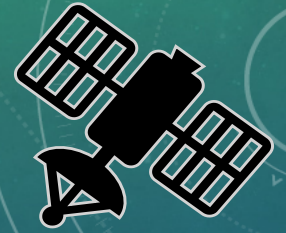
PE/PG, as appropriate, must certify costs are “integral, necessary, and required for site rehabilitation.”

Cannot claim costs for Brownfield Area designation or VCTC Application preparation and submittal.



COMMON PITFALLS... AVOID THIS SPACE JUNK!

- Costs from prior calendar years
- Costs not paid by the Applicant
- VCTC Applicant was not signatory to the BSRA or VCA
- Engineering Controls that serve dual purpose: as cap and for specific end-use
 - E.g., a “Cadillac cap” to address development needs that include heavy truck traffic. The P.E. will need to certify prorated costs that are integral to site rehabilitation.
- Premium Materials (the Golden Shovel ribbon cutting)
- Gas Mitigation Systems; Indoor Vapor Intrusion Barriers



QUESTIONS???

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