

# HOW AMENDMENTS TO THE NYS BROWNFIELD CLEANUP PROGRAM WILL AFFECT AFFORDABLE HOUSING DEVELOPMENTS

The New York State Brownfield Cleanup Program (BCP) was created in 2003 to incentivize private-sector remediation and promote brownfield redevelopment for the revitalization of economically blighted communities. In recent years, the program has become crucial in closing funding gaps for affordable housing projects, with BCP tax credits becoming acceptable equity for syndicators. Instead of avoiding contaminated properties, affordable housing development teams are seeking them out in hopes of being eligible for the BCP.



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Significant amendments to the BCP were made with the passage of the NYS budget on April 9, 2022, which will almost certainly affect affordable housing brownfield redevelopment. Here are some quick facts about these amendments.

- The BCP was **extended ten years to December 31, 2032**. Projects entered into the program before that date must obtain Certificate of Completion by December 31, 2036.
- **A \$50,000 fee was created which must be paid by the applicant at the start of the project**. This highly controversial fee does include a few waivers, including for affordable housing projects. The process for waiving the fee is still under consideration.
- In addition to the 5% tangible property tax credit bump added in 2015 for affordable housing projects, the latest amendments include **additional 5% bumps if a Site is deemed a renewable energy facility or is located within a disadvantaged community (DAC)**. The tangible property tax credits are calculated based on overall project development costs and various eligibility criteria. In the current BCP generation, projects start with a 10% baseline with the ability to receive up to 24% of the development cost back. For a \$50M project, that would theoretically equate to between \$5M and \$12M, although these credits are capped based on investigation and remediation costs which can actually limit the tangible credits to below the 10% baseline.
- **The renewable energy facility definition appears to include projects in which any renewable energy technology (solar, geothermal, wind, etc.) is utilized at any scale**, but more information is anticipated to be released surrounding that definition. For instance, would adding a handful of solar panels to your development make you eligible for the extra 5%?
- **A DAC definition was added and the state is currently assessing various classification criteria**. Factors under consideration include negative health effects, pollution, impacts of climate change, socioeconomic factors, environmental justice factors, etc. Draft disadvantaged communities can be found on the NYS Climate Act website: <https://climate.ny.gov/Our-Climate-Act/Disadvantaged-Communities-Criteria/Disadvantaged-Communities-Map>

- **New requirements were created for projects in New York City** seeking eligibility for tangible property tax credits. Eligibility requires a project to meet one of the following:
  - ✓ The Site is in a DAC, is in a Brownfield Opportunity Area (BOA), and the State has determined the redevelopment is in conformance with the BOA plan; OR,
  - ✓ The Site is used primarily as a renewable energy facility to generate electricity or thermal energy or is used as a storage facility for renewable energy; OR
  - ✓ The project meets the State's affordable housing definition.
- Although not part of the recently enacted legislation, **proposed changes to 6NYCRR Part 375 regulations address how site cover systems would be used to calculate site preparation credits and by extension, tangible property credits.** Currently, costs associated with impervious surface construction (pavement, building slabs, etc.) are included in the costs of the site cover system. The proposed changes would require the applicant to assume for tax credit purposes that the entire site cover is comprised of soil, regardless of actual construction. Because soil is typically much cheaper than parking lot construction, this could substantially reduce available tax credits. This is a controversial issue and the final regulations are anticipated to include changes to this proposed provision.

The BCP is a highly nuanced program; if planned for and navigated efficiently, it can mean the difference between a multi-year headache and a highly successful redevelopment project. To get the most out of BCP incentives, developers need experienced engineering and legal experts on the team from the conceptual stage of the project.

LaBella's team of BCP experts will continue following the legislation as it evolves to help our affordable housing partners navigate the new program. If you currently have a project in the BCP and are looking for updates or are in the site selection phase and are wondering if your project may be eligible for the BCP, please don't hesitate to reach out to us.



It's about more than creating, maintaining and resurrecting the buildings in which we work, learn and engage - it's about beautifying and bettering the communities we call home.

