Skeptics Charge Misuse of Tax Incentive Program

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Several developers of multimillion dollar projects on prime real estate are tapping a tax incentive program created to spur development of properties plagued by environmental hazards.

Critics of the developers say their properties are not sufficiently polluted and would have been developed even without the tax incentives. The Brownfield Cleanup Program offers builders tax breaks of up to 22% of the cost of redevelopment, one of the most generous brownfield breaks in the country. In exchange, developers absorb the cost of cleaning up polluted sites.

Projects such as the Ikea in Red Hook, the Bronx Terminal Market, and the New York Times building to the west of Times Square are being developed on properties marginally impacted by environmental degradation. All three are either receiving the tax credits or have applied for them.

Environmentalists and legislators concerned about the misuse of the law say the problem is the broad definition of brownfield. Brownfields are traditionally defined as land that has lain vacant for decades because of contamination by industry, where the liability associated with development is overwhelmed by any potential value. The New York law was passed last year, but only recently have developers begun applying. The law describes brownfields as "abandoned, idled, or underused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination." It does not specify what could "complicate" development, giving developers leeway, say critics.

"The question is, how much contamination do you need for it to be a brownfield, and under this definition, all you need is an inkling," said an environmental attorney, Larry Schnapf.

While the program was meant to induce developers to build on land considered undevelopable, many of the projects receiving tax breaks under the program would have been built regardless. Development of the Times building, for example, was in motion prior to the law's enactment. And Ikea signed the deal to build a store on the Red Hook site a full year before the pro gram existed.

"From the Ikea point of view, it didn't really change anything for us," said the head of real estate for the company, Pat Smith. "We were going to do the cleanup anyway, the tax breaks are just a nice bonus."

Calls to Forest City Ratner, which is building the Eight Avenue high-rise that will house the Gray Lady, and Related Companies, which is constructing the Bronx Terminal Market, were not returned.

The New York law is structured to provide developers more generous tax breaks than offered in other states. In New York, the tax breaks are not linked to the cost of the environmental cleanup, but are instead based on the value of the redevelopment. In areas like Manhattan, where real estate values are high, this can translate into huge sums of money. In New Jersey and most other states, on the other hand, tax breaks are linked to revenue generated by the environmental cleanup.

With enormous tax breaks, developers are eager to participate in the program. This has worried some legislators that the mainstream projects could wipe out the amount the state has allocated for the program, leaving small community projects without funds. While community groups are eligible for the breaks, many are not yet aware of the program, unlike a few developers of larger projects who have already filed applications.

The state has estimated that the program would cost \$135 million a year in tax breaks. The Forest City Ratner development, estimated to cost \$850 million, could alone translate into more than \$100 million in breaks. The \$300 million Bronx Terminal Market and Ikea, which is estimated to cost more than \$100 million, could also mean missed tax revenue for the state.

"There is not an unlimited pot of money, so if the projects are large, three to five developments could wipe out all the funds," Assemblyman Vito Lopez said.

"The intention of this law was to get local community groups to develop hard-to-develop sites, and I am disappointed at the direction this is going," Mr. Lopez added. "We are planning right now to revisit the direction of this Brownfields program and put together legislation to close these loopholes."

"This law is giving tax credits to companies developing in areas that are only marginally contaminated and would be developing the sites regardless of the tax breaks," Mr. Schnapf said. "There needs to be further guidance on the law so it is clear what is intended."

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Although it's obviously toxic as a cultural metaphor, is Times Square actually, literally toxic? That's what Bruce "The Juice" Ratner and the *New York Times* are claiming. Forest City Ratner Companies and the *New York Times* Company are building a new headquarters for the old gray lady on 40th and Eighth Ave. *City Limits* reports that the developers are applying to have the construction considered as an environmental clean-up site. If their application is accepted, they could get $170 million in tax credits under New York's Brownfield law. Environmentalists are appalled, but the companies claim they qualify for the cash payout, which stipulates that any property "complicated by the presence or potential presence of a hazardous waste" would be eligible. *City Limits* also reports that waste materials are present, specifically the remains of one 7,500-gallon street level oil tank and two 550-gallon capacity underground tanks. However, according to city records, the site has never been used for industrial purposes. The development will probably get the tax break because they technically qualify for it and the two companies behind it have enough lawyers in their employ to fill the Grand Canyon with litigation.