

ACT 381 GUIDANCE

FOR BROWNFIELD PLANS, WORK PLANS AND COMBINED PLANS



Marquette Waterfront, 1960s



Cleanup Operations



Founders Landing Redevelopment

Pursuant to the
Brownfield Redevelopment Financing Act,
1996 PA 381, as amended
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CHAPTER 1 | INTRODUCTION

The Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381)¹, is an Act to authorize municipalities to create a Brownfield Redevelopment Authority (BRA) to facilitate the implementation of Brownfield plans and associated work plans that promote the revitalization, redevelopment, and reuse of contaminated, blighted, functionally obsolete, tax reverted, or historic property. Act 381 prescribes the powers and duties of Brownfield redevelopment authorities and certain powers and duties of certain state officers and agencies including the Michigan Department of Environmental Quality (DEQ) and the Michigan Strategic Fund (MSF). Note that the Michigan Economic Development Corporation (MEDC) serves as staff support to the MSF, and has developed a [set of guidelines](#) detailing the type of projects that may be considered for MSF support. References to MSF or MEDC may be considered equivalent throughout the document.

Act 381 authorizes and permits the use of school and local tax increment financing to help reduce the burden of Brownfield related costs when redeveloping affected properties. The following document is an explanation of Act 381 and the guidance developed by DEQ for environmental activities, and by MSF for non-environmental activities to alleviate Brownfield conditions on a property.

The following definitions are key to understanding what activities can be reimbursed by tax increment financing, on what property, and which agency reviews the costs. Additional definitions are provided in Appendix A.

Eligible Activity

Eligible Activities are actions that are undertaken to redevelop a Brownfield site, the costs for which are eligible for reimbursement via tax increment financing. Sites located within a [qualified local government unit](#) (QLGU, or “core community”) or owned by a land bank, are potentially eligible for cost reimbursement related to demolition, lead and asbestos abatement, infrastructure improvements and site preparation activities. Parcels located in non-QLGU locations are eligible for demolition and lead and asbestos abatement activities.

Eligible activities may be undertaken and costs incurred on eligible, or potentially eligible, property prior to inclusion in a Brownfield plan². It is *highly recommended* that consultation with DEQ and/or MEDC Brownfield staff takes place prior to incurring costs so that it is clearly understood by all parties what activities are potentially eligible, and what the timeframe is for incurring the costs. The MEDC will consult with the local BRA in order to determine the likelihood of local support for the costs and to establish a projected timeline for Brownfield plan approval by the local jurisdiction. Costs incurred prior to the Brownfield plan approval must be incurred after the amendment of Act 381 on December 31, 2012.

Please be aware that use of school tax revenue for non-environmental activity reimbursement is subject to approval by the MSF. Any costs associated with activities that do not comply with the eligible activity guidance and are incurred prior to the approval of the Brownfield plan, work plan, or

¹ The updated statute can also be found at www.legislature.mi.gov by using the Public Act MCL Search and entering “381” in Public Act Number and “1996” in Public Act Year.

² MCL 125.2663, Section 13(16)(c)(iii)

combined Brownfield/work plan are made at the risk of the project, and may not receive reimbursement for those activities.

The DEQ assumes no responsibility for any actions taken or not taken by a BRA for any reliance they have placed on the guidance. Brownfield Redevelopment Authorities should contact their legal counsel regarding any issues with Act 381.

Environmental vs. Non-Environmental Activities

Costs related to environmental activities are reviewed by the DEQ. These include Baseline Environmental Assessment (BEA) activities, due care activities, additional response activities to satisfy due care obligations (e.g. soil remediation or installation of a barrier to prevent unacceptable exposure), site and building demolition that are response activities, lead and asbestos abatement, reasonable costs of developing and preparing Brownfield plans and work plans, and reasonable costs of environmental insurance. Interest may be allowed. Some examples of eligible response activities, by category, include:

BEAs

- Environmental assessments subsequent to determining the property is a facility and to meet All Appropriate Inquiry standards.
- Sampling and analysis.
- Data interpretation and reporting.
- Disclosure of BEA.

Compliance with Due Care (7a) Obligations

- Investigation (sampling, analysis, interpretation, reporting) to define contamination.
- Assessment of intended use with regard to contamination on-site to identify 7a issues.
- Development of a plan for response activities to meet 7a obligations.
- Contaminant treatment or removal to prevent unacceptable exposure or exacerbation.
- Barriers to prevent exposure, exacerbation, or third party impacts.

Additional Response Activities

- Evaluation.
- Interim response activity.
- Remedial action.
- Demolition that is a response activity.
- Lead or asbestos survey and sampling.
- Lead or asbestos abatement that is a response activity.
- Taking of other actions necessary to protect the public health, safety, welfare, environment, or natural resources including those that are more protective than that required to comply with due care.

Costs related to non-environmental activities are reviewed by the MEDC for the MSF. These include site and building demolition that is not an environmental response activity, lead and asbestos abatement, site preparation, infrastructure improvements, assistance to a local government or land bank for the costs of managing property for economic development purposes, costs of relocating public buildings, and reasonable costs of developing and preparing Brownfield plans and work plans. Interest may be allowed if it meets MSF policy (see Appendix C). For greater detail, please review the Eligible MSF Non-Environmental Activities Guidance (see Appendix D).

Lead and asbestos abatement and demolition are activities that can be approved by either DEQ or MSF, as appropriate. Generally, if lead and asbestos are in the soil or have otherwise been released to the environment, they will be environmental activities approved by the DEQ. If they are in stable condition and contained in a building, they will typically be approved by the MSF.

Eligible Property

This is property for which eligible activities are proposed to alleviate Brownfield conditions, have been identified under a Brownfield plan to have Brownfield related costs, and that were used, or are currently used for commercial, industrial, public, or residential purposes, and that are one or more of the following:

- Is located **in** a QLGU and is either a facility, is functionally obsolete, blighted or historic and may include parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.
- Is **not** located **in** a QLGU and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property.
- Is **not** located **in** a QLGU and is a facility, functionally obsolete, blighted, or historic if the eligible activities on the property are limited to demolition and/or lead or asbestos abatement.
- Is tax reverted property owned or under the control of a land bank fast track authority.
- Is a transit oriented development, transit oriented facility, or is a designated 'targeted redevelopment area' (see below).

The MSF considers adjacent and/or contiguous property to be parcels that are immediately next to the qualifying parcel. Parcels are legally described areas, not tax identification parcels which may or may not correspond to the legal description. Publicly owned streets, alleyways, waterways, public or private easements, or similar divisions crossing or separating parcels may be ignored when determining adjacent and/or contiguous status, as long as the divided or separated parcel is under a single owner.

A facility is defined by [Part 201](#), Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) (also see [Part 201 Citizen's Guide](#)). The property needs to be determined to be a facility *prior* to submission of a work plan to the DEQ. Parcels adjacent or contiguous to a facility property do not have to be a facility for MSF eligible activities to be conducted on them if the development of those parcels is estimated to increase the captured taxable value of the eligible property.

If the current owner/operator of a facility wants to expand their business on an adjacent property, they may request approval of additional environmental activity costs as long as the property owner is not liable under Part 201 of the NREPA and has conducted a baseline environmental assessment. The property can then be included in a brownfield plan and captured taxes, including school taxes, can be used for reimbursement of eligible response activities.

Eligible Property: Targeted Redevelopment Area

A Targeted Redevelopment Area (TRA) is a cluster of between 40 and 500 parcels that can be defined as eligible property without qualifying each individual property. A Brownfield plan must be developed and approved by the local jurisdiction in order for the MSF to consider approval of school tax capture for a

TRA. The TRA designation must be made by the local jurisdiction and be approved by the MSF, whether the TRA will capture school and local taxes, or receive local only tax capture. No more than five TRAs may be approved per year across the state, and there is a maximum of two per jurisdiction, per year.

The MSF support for the TRA will be contingent upon whether the local jurisdiction has developed an area, sub area, development, or similar plan for the area (although a jurisdiction master plan would probably be too general for this purpose). This plan should fully describe what the goals of the project are, why the area should qualify for the designation, and how the redevelopment will alleviate Brownfield conditions preventing redevelopment. MEDC will consider support for a TRA based on the prevalence of Brownfield conditions throughout the proposed area, and the likelihood that designation will lead to significant alleviation of Brownfield conditions throughout the proposed area. Other criteria for consideration include presence of at least one significant proposed project and/or redevelopment of at least 20 parcels that would contribute TIR to the TRA within a few years, and the potential for significant additional revitalization and investment within three to five years.

Initial Taxable Value and Increment

Cleanup and redevelopment of a Brownfield property will increase the taxable value of the property, and therefore, will increase the property taxes generated from the property. The increase in tax revenue over a base year is the tax increment. The initial taxable value (or “base year”) for a property can be set to either the year in which the Brownfield plan is approved, or the next assessment year following approval of the Brownfield plan. It may be set to zero if the property is in a tax exempt status. The increased tax revenues that rise above the base value after redevelopment are known as “tax increment revenue” (TIR), and more commonly, as captured taxes. These captured taxes can then be used to reimburse the expenses for eligible environmental response and non-environmental activities. The taxing jurisdictions continue to receive their base year tax revenue until the Brownfield plan ends, at which time the TIRs revert to the taxing jurisdictions.

TIRs eligible for capture are all ad valorem, personal property and specific taxes, including taxes levied for school operating purposes with approval from the DEQ or MSF. The intermediate school district tax is not a school tax under Act 381. Taxes already captured as part of an existing tax increment financing plan (under other state laws) and taxes levied to pay off specific obligations such as sinking funds or bonds and special assessments are exempt.

If a new millage is passed by the jurisdiction after the Brownfield plan has been approved, that new millage is added to, and captured as, tax increment revenue.

The amount of allowable local and school tax capture is limited to the actual costs of the eligible activities as approved by the DEQ and/or MSF, except as provided by Section 8 of Act 381 for deposit into the local site remediation revolving fund (LSRRF). *Unless otherwise explicitly stated in the work plan approval by the DEQ and/or MSF, capture of school and local taxes to reimburse the cost of eligible activities must be proportional to the existing ratio of school to local taxes being captured at the time such approval is granted.*

Tax Increment Revenue and Other Tax Capture Entities

Tax increment revenue does not include taxes captured by a Downtown Development Authority (DDA), tax increment finance authority, corridor improvement authority, or development finance authority (“tax capture entity”). If the location of a project is within a tax capture entity and the tax capture entity is capturing either all, or a portion of, local TIR, it results in a greater proportion of the tax increment

revenue coming from the state. The preferred way to resolve the issue is to develop an “interlocal” agreement, where the tax capture entity gives up capture of TIR on the project site to the BRA for the duration of the Brownfield related TIR capture.

Some jurisdictions are unable or unwilling to do this, and MSF may still want to support the project. In these instances, the starting point for determining state support for the project will be to determine the maximum amount of TIR that could be provided through a Brownfield plan (as if the tax capture entity was not capturing the taxes). The proportionality test based on existing millage rates is then applied against this maximum amount. The tax capture entity will be expected to contribute resources to the project in an amount equal to or greater to their proportional amount. Likewise, the state will determine their share under this scenario and cap their contribution based on this amount

Tax increment revenue may not be utilized to reimburse any activities utilizing DEQ or Community Revitalization Program (CRP) grant funds, but may be used to repay loans. When utilizing multiple incentives to complete a project, it is suggested that the DEQ and/or MSF is consulted to determine whether the incentives can be utilized together.

Liability Issues

Use of school taxes for environmental response activities that benefit a party who is liable for the contamination is prohibited, with the exception of response activities associated with a landfill. Under Act 381, it is considered a benefit to a liable party only if the developer or person seeking reimbursement for eligible activities at the eligible property is liable under Section 20126 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). If the developer or person seeking reimbursement is a business entity with a member who is liable, school taxes cannot be used based on the direct and/or indirect benefit that the liable party would receive.

Authorities are responsible for inquiry into the status of liable parties for eligible properties and assuring that plans submitted for DEQ review do not propose activities that a liable party is required to perform. The State or BRA may take appropriate legal action to recover the costs of eligible activities funded through tax capture from person(s) who are liable for the contamination. If liability for contamination on the eligible property is uncertain, we recommend contacting the DEQ for assistance in determining the potential liability prior to preparation of a Brownfield plan or submission of a work plan. Liable parties do not have to be notified that eligible activities will be undertaken on the eligible property; however, if cost recovery will be considered in the future, the authority should consider notifying the liable party of activities occurring at the eligible property.

Act 381, as amended does not prohibit a BRA from using school taxes to conduct MSF non-environmental eligible activities for a Part 201 liable party. The MSF does not need to consider liable party issues in its review of an Act 381 work plan. In a case where the municipality was the liable party for contamination, as the owner or operator of a specific property, school tax increment financing cannot be utilized to address the contamination because in that case the TIF would be benefitting the liable party.

TIR Initial Capture Date and Capture Period

For eligible property included in a Brownfield plan, the capture of tax increment revenues (TIR) can begin up to five years from the Brownfield plan approval date (via resolution), after which, the 30 year limit for capture begins. The beginning date of capture may not be amended if the jurisdiction has begun to reimburse costs on the eligible property.

MEDC interprets that tax increment revenue “capture” does not have to be collection of actual dollars, *but is a date that was set in the Brownfield plan to begin capture within five years of the eligible property being approved in the plan.* This acknowledges that the eligible property’s value may be lower than the baseline value when the TIF table was approved. In the case of a Brownfield plan that was approved with the eligible property in the plan without tax capture (an “MBT only plan”), that plan may not be amended to begin capture if it is outside of five years from the original approval date, but the plan is considered valid for the term of the MBT credit eligible investment period.

If the eligible property was not previously included in the Brownfield plan (i.e. is being added via amendment), the capture of tax increment revenues can begin up to five years from the date that property is included in the amended Brownfield plan approval. The “clock” for the eligible properties in the original plan remains the same as the original approval date. The new five years only applies to eligible property added via amendment.

For work plans containing both DEQ and MSF eligible activities, please provide a [tax capture schedule](#) that identifies the reimbursement of environmental response and non-environmental costs separately. We also recommend that separate tax capture/reimbursement schedules be prepared for approval in the Brownfield plan.

CHAPTER 2 | BROWNFIELD REDEVELOPMENT AUTHORITY

A Brownfield Redevelopment Authority (BRA) is an appointed body at the county, city, village or township level that is responsible for developing Brownfield plans. It may also issue revenue and tax increment financing bonds/notes to finance eligible activities and capture taxes from the eligible property to repay the obligations.

A BRA has the ability to prepare a property for redevelopment by conducting an environmental assessment, or otherwise initiating response activities. The BRA can then be reimbursed once the property is redeveloped via TIR. If the BRA anticipates using school taxes for reimbursement, a work plan approved by the DEQ or MSF, as appropriate, will be necessary before conducting certain eligible activities.

Interlocal Agreements

A local unit of government can defer to a county BRA through a local declaration or proclamation that allows the county BRA to undertake projects within the local jurisdiction. An intergovernmental agreement that addresses when the county's BRA will have jurisdiction and how future LSRRF funds will be divided among the participating local units should be developed.

The benefits of allowing a county BRA to undertake brownfield projects within local jurisdictions include: the potential of governmental cost savings, efficiencies in allowing a more experienced and resourced organization to manage the long-term tax reimbursements to an eligible entity, and the potential for a larger LSRRF to be generated at the county level.

Local Site Remediation Revolving Fund

A BRA may establish a local site remediation revolving fund and place excess captured taxes into the fund from properties where DEQ approved eligible environmental response activities are conducted. Capture of excess school taxes on eligible activities approved by the MSF is prohibited for deposit into the local site remediation revolving fund³. The BRA may use both the school and non-school portions of the revolving fund to conduct eligible activities on other eligible properties without DEQ approval unless the BRA plans on capturing additional school taxes for deposit into the LSRRF. The DEQ would require the submittal of a Brownfield work plan which includes the description of the eligible activities and will undertake its normal review of those activities and ability to capture additional school taxes for the LSRRF.

Act 381 does not expressly prohibit the BRA from establishing a LSRRF after the brownfield plan has been adopted. However, if tax capture has begun or is completed for a specific project, then the BRA should amend the brownfield plan to include capture for an additional five years or up to the statutory limits of funding (no more than the original amount of tax increment financing and no more than the amount of school taxes approved for capture) for the LSRRF. The three (3) mill contribution to the state Brownfield Revolving Fund should be continued throughout the LSRRF capture period up to the 25 year limit on capture of the BRF.

³ M.C.L. 125.2663(5)

Establishing a Brownfield Redevelopment Authority

A local unit of government – city, village, township, or county – can establish a BRA and adopt a Brownfield plan pursuant to Act 381.⁴ This guide includes sample documents in Appendix B (notices, resolutions, letters, Brownfield plan components, etc.) necessary for the BRA formation, preparing a Brownfield plan, and the Brownfield plan approval process. Throughout this section, underlined Internet links are provided to relevant state and federal statutes that may be helpful.

A BRA is a body that may use tax increment financing to assist with the redevelopment of eligible Brownfield properties. A local governing body must make the decision whether to approve a Brownfield plan that is developed by a BRA, since it is the entity that has jurisdiction over the use of taxes for the TIF.

Step 1

Hold one or more meetings with community leaders (i.e., mayor/president/chairperson, commission/council/board of trustees, finance department, planning departments, etc.) to explain the purpose and powers of a BRA and the benefits to the community.

Tips

- Representatives of the DEQ and MEDC can provide assistance to the local unit of government throughout this process.
- If contemplating a county BRA, it is recommended to meet with each of the local units of government within the county to solicit their participation.

Step (2A, 2B)

The local governing body (i.e., a city council, commission, township board, and county commission) must adopt a resolution of intent to establish a BRA, as specified in Section 4 of the legislation. The resolution sets a date for a public hearing on the adoption of a resolution creating the BRA.

Tips

- For a county BRA, all participating local governing bodies must concur by resolution to be included in the county's BRA. (The Act does not indicate when such concurrence must be obtained; however, it would be prudent to obtain a concurring resolution from the participating local units of government before adopting the resolution of intent to establish an BRA.)
- A county BRA is only able to exercise its powers over any eligible property within the municipal limits of those local governing units which have adopted a resolution to join the county BRA and have concurred with the provisions of a Brownfield plan.

Sample Documents:

- Resolution of Intent to Create an BRA (Sample A – Exhibit 1)
- Resolution of Concurrence by Municipality to Join County BRA (Sample A – Exhibit 2).

⁴ This guide has been updated to reflect all of the amendments to the Brownfield Redevelopment Financing Act, 1996 PA 381, through January 2013.

Step 3

The resolution of intent to form a BRA shall set a date for holding a public hearing on the adoption of a proposed resolution that creates the BRA. The notice of the public hearing must include the date, time, and place of the hearing.

Sample Document:

- Notice of Public Hearing [for publication and posting] (Sample B)

Step 4

The local governing body must hold the public hearing on the date stated in the notice (in accordance with the Open Meetings Act and any local requirements).

Tip

- Link to the [Open Meetings Act, 1976 PA 267](#).

Step 5

If the governing body intends to establish a BRA, they must adopt a resolution establishing the BRA within 30 days of the public hearing. The resolution may be adopted immediately after completing the public hearing, at the same session of the governing body required in Step 4.

Sample Document:

- Resolution Establishing an BRA and Appointing Board Members (Sample C).

Step 6

As per Section 5 of the legislation, the governing body may designate as the BRA's board, the trustees or governing board of the following:

- Economic Development Corporation (EDC);
- Downtown Development Authority (DDA);
- Tax Increment Finance Authority (TIFA);
- Local Development Finance Authority (LDFA); or,
- The local governing body may establish a completely new board consisting of between five (5) and nine (9) individuals appointed by the chief executive officer of the municipality and approved by the governing body. Initial appointments shall be for one, two, and three years, an equal number of each as practical, then for three year terms thereafter.

Tips

- Establishing the board and appointing the board members may be carried out in the same session in which the public hearing in Step 4 is held.
- The [Incompatible Public Offices statute, 1978 PA 566](#), should be reviewed by the local governing body's attorney when deciding whether to appoint an elected official as a BRA member. This type of appointment to a BRA is unusual, but not prohibited by Act 381.

Step 7

The resolution establishing a BRA, passed by the local governing body in Step 5, must be filed with the State of Michigan promptly after its adoption. Although Section 4(3) of Act 381 specifies filing with the Secretary of State, it should be filed with the Michigan Department of State, Office of the Great Seal.

Also, it is recommended that both MEDC and DEQ Brownfield staff are notified via email that a new BRA will be created.

Tip

- There is a 60-day period after the filing of the resolution establishing the BRA during which any person with standing may challenge the establishment of the BRA in court.

Sample Document:

- Letter to Michigan Department of State, Office of the Great Seal (Sample D)

Step 8

The BRA's board should conduct an organizational meeting at which it:

- Elects the officers of the board;
- May adopt bylaws by majority resolution;
- Shall adopt rules of governing, its procedure, and the holding of regular meetings; and,
- May employ a director, subject to approval by the governing body that created the BRA.

Tip

- The director may not be a member of the board; however, a local government employee or official (i.e., city/village manager, chamber staff person, local economic development corporation staff person) may serve as the director on a shared-time basis. The BRA may agree to reimburse the municipality for such services.

Sample Documents:

- Bylaws (Sample E)
- Resolution Approving Bylaws (Sample F)

CHAPTER 3 | BROWNFIELD PLANS

The Brownfield plan has three main functions, it establishes the boundary of the eligible property, describes how the eligible property qualifies as a Brownfield, and outlines the costs associated with the activities that must be undertaken to alleviate the Brownfield conditions and prepare the site for redevelopment. Please see the Brownfield Plan or Combined Plan Instructions on the [MEDC website](#) for a detailed explanation of specific information that needs to be incorporated into the plan.

How to Adopt a Brownfield Plan

Step 1

A Brownfield plan (plan) must contain a number of provisions as specified in Section 13(1) of Act 381 (M.C.L. 125.2663). The required elements of a plan are described in a-n below:

- (a) A description of the costs intended to be paid for with the tax increment revenues. For a plan with properties owned or controlled by a land bank fast track authority, a listing of all eligible activities that may be conducted.
- (b) A brief summary of the eligible activities proposed for each eligible property. For a plan for properties owned or controlled by a land bank fast track authority, a brief summary of eligible activities that may be conducted on one or more of the eligible properties.
- (c) An estimate of the captured taxable value and tax increment revenues for each year of the plan from the eligible property.
- (d) The method by which the costs of the plan will be financed, including a description of any advances made from the municipality.
- (e) The maximum amount of note or bonded indebtedness to be incurred, if any.
- (f) The duration of the plan.
- (g) An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the eligible property is located.
- (h) A legal description of the eligible property to which the plan applies, a map showing the location and dimensions of each eligible property, a statement of the characteristics that qualify the property as eligible property, and a statement of whether personal property is included as part of the eligible property. If the project is located on property that is functionally obsolete, the taxpayer shall include with the application, an affidavit signed by a Michigan Certified Assessing Officer (former level 3 assessor) or Michigan Master Assessing Officer (former level 4 assessor), which states that it is the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion.
- (i) Estimates of the number of persons residing on each eligible property to which the plan applies and the number of families and individuals to be displaced.
- (j) A plan for establishing priority for the relocation of persons displaced by implementation of the plan.

(k) Provision for the costs of relocating persons displaced by implementation of the plan, and financial assistance and reimbursement of expenses, including litigation expenses and expenses incidental to the transfer of title, in accordance with the standards and provisions of the federal uniform relocation assistance and real property acquisition policies act of 1970, Public Law 91-646.

(l) A strategy for compliance with the Relocation Assistance Act, 1972 PA 227, MCL 213.321 to 213.332.

(m) A description of proposed use of the local site remediation revolving fund.

(n) Other material that the authority or governing body considers pertinent.

Tips

- Tax parcel identification number(s) should be included in the plan in addition to the legal description.
- If tax increment revenues will be captured, the plan may be more complex. Learn more about tax increment financing at [the Department of Treasury website](#).
- The maximum duration of a plan is 35 years (five years to begin capture + 30 years for capture); however, capture of tax increment revenues from an eligible property is limited to the lesser of the length of time required to reimburse eligible costs and deposit to the local site remediation revolving fund or 30 years.
- A plan should identify if interest costs associated with the financing of the eligible activities will be reimbursed, if school tax increment revenues will be used for interest reimbursement, the interest rate, and interest amount (see Appendix C).
- The BRA may adopt multiple plans, each with a single property, or groups of properties, or a single plan with multiple properties.
- The BRA should approve the plan and forward it to the local governing body for a public hearing and required approval.
- DEQ and MEDC staff can assist your BRA with preparing a plan.

Sample Document:

- Brownfield Plan (Sample G)

Step 2 (2A, 2B)

The local governing body must hold a public hearing prior to the approval or amending of a plan. The notices for the public hearing must state the time, date and place of the public hearing, and a statement that the property description, maps, description of the plan, and other appropriate information is available for public review at a specified location. The notices must also state that all aspects of the plan are open for discussion at the public hearing.

Tip

- The local governing body may delegate the public hearing process to the BRA or to a subcommittee of the governing body.

Sample Document:

- Notice of Public Hearing [for publication] (Sample H)

Step 3

The local governing body shall provide notice to all affected taxing jurisdictions from which tax increment revenues will be captured in the plan. It is recommended that a copy of the draft plan be submitted with the notice to all affected taxing jurisdictions in order to accomplish conveying the fiscal and economic implications of the plan.

This notice must be given at least ten days prior to the public hearing on the plan. If the plan includes the capture and use of school taxes, the governing body shall also provide notice to the DEQ and/or the MSF depending on the types of eligible activities to be reimbursed with school taxes. This notice must also be given at least 10 days prior to the public hearing on the plan. The same notification that is provided to the taxing jurisdictions can be used for notifying the DEQ and MSF. For address/contact information see Chapter 4.

Sample Document:

- Notice to All Affected Taxing Jurisdictions (Sample I)

Step 4

The local governing body must hold the public hearing on the date stated in the notice (in accordance with the Open Meetings Act and any local requirements), and note all comments including all data presented at the hearing.

Step 5

The governing body must determine whether or not the plan constitutes a public purpose. If the plan is determined to constitute a public purpose, the governing body may approve the plan by resolution. The resolution must include a series of factual findings and legal conclusions related to financing and other issues.

Tips

- If the BRA wants to use school taxes for certain environmental response activities, a “work plan” must be submitted and approved by the DEQ.
- If the BRA wants to use school taxes for infrastructure improvements, lead or asbestos abatement, demolition or site preparation that is not a response activity, a “work plan” must be submitted and approved by the MSF. In addition, a development agreement or reimbursement agreement between the BRA or municipality and owner or developer of the eligible property is required.
- Procedure, adequacy of notice and findings with respect to purpose and captured tax value shall be presumptively valid unless contested in a court of law within 60 days after the governing body adopts the plan.

Sample Document:

- Resolution Approving Brownfield Plan (Sample J)

Concurrence

If a property is going to be included in a Brownfield plan that is being considered by a County BRA, and the property is located within a village, city or township jurisdiction, the County must receive concurrence for the tax capture from that local jurisdiction. The executive body of the local jurisdiction must approve tax capture for the project via resolution.

Administrative Fees

A BRA may use tax increment revenues derived from local taxes for administrative and operating expenses of the BRA, and eligible environmental activities conducted on eligible properties⁵. In each fiscal year, the amount of TIR that can be used for administrative and operating expenses purposes is as follows:

Number of Projects	Amount
5 or Fewer	\$100,000
6 to 10	\$125,000
11 to 15	\$150,000
16 to 20	\$175,000
21 to 25	\$200,000
26 to 30	\$300,000
31 or more	\$500,000

Under two situations, these fees may be increased by increments of two percent (2%) up to ten percent (10%) total; 2% for each written agreement entered into by a County BRA to serve as another municipality’s BRA, or 2% if an BRA enters into an agreement with one or more other authorities to administer one or more administrative operations of those other authorities.

Brownfield Redevelopment Fund

The state Brownfield Redevelopment Fund⁶ is a revolving fund within the Department of Treasury. The state Treasurer directs the investment of the fund. Monies paid into the fund shall remain in the fund and not lapse into the general fund. Not more than fifteen percent (15%) of the annual deposit to the fund may be used to pay the administrative costs of the MSF and the DEQ to implement both Act 381 and the Clean Michigan Initiative Brownfield grant and loan program⁷. A portion of the fund may be used for a grant and loan program to pay for costs of eligible activities under section 13(15) on eligible property. This grant and loan program is to be created and operated by the MSF which will publish the standards, guidelines, templates, and other forms necessary to implement the program.

Brownfield plans approved after January 1, 2013 must dedicate three mills of the state education tax to be paid to Treasury for the Brownfield Redevelopment Fund. This includes plan “amendments” that are for new projects that are included in jurisdictional base plans in the cities of Grand Rapids and Kalamazoo. The three mills are dedicated for up to 25 years of the plan capture. For Brownfield plans approved prior to January 1, 2013, the three mills will not be dedicated, unless property is added to an approved plan via amendment. Note that in the case where during the last year of capture the full amount of tax increment is not needed to reimburse costs to the project, the three mill contribution may be reduced proportionally.

If a Brownfield plan was approved prior to January 1, 2013, but is amended to add eligible property after January 1, 2013, the TIR from the added property must dedicate three mills of its state school tax value to Treasury. If this is considered too burdensome, a jurisdiction may want to abolish the existing plan and approve a new one for the project. If abolition of a Brownfield plan is under consideration, it is

⁵ MCL 125.2663(16)(a)

⁶ MCL 125.2658a

⁷ Part 196 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.19601 to 324.19616

recommended that the BRA contact DEQ and/or MEDC staff prior to the action to discuss any additional options that may be available.

The dedication of the three mills to Treasury does not affect the ratio that exists between local and school taxes. It is considered as the same as local administrative fee dedication in that it is tracked separately in a TIF table, but is still considered a contribution to the overall project since it pays for agency project administration.

Abolishing a Brownfield Plan

When a project is finished, and all costs under that plan have been reimbursed, the governing body may abolish the Brownfield plan. Similarly, if a project does not come to fruition, and reimbursement for eligible activities has not occurred for eligible property that was included in a Brownfield plan, the governing body may abolish the plan via resolution. If the opportunity for a new project develops, the jurisdiction may create a new Brownfield plan for that property, which would restart the five year clock for tax increment revenue capture to begin, and TIR may be captured for up to 30 years on the property under the new plan. The three mill contribution to the Brownfield Redevelopment Fund is applicable to the properties under the new plan.

Any Single Business Tax (SBT) or Michigan Business Tax (MBT) Brownfield credits approved under the initial Brownfield plan would not be eligible for a request for certificate of completion until a new Brownfield plan is approved that includes those properties the eligible investment occurred upon.

Development and Reimbursement Agreements

A development or reimbursement agreement is a legal document that describes the terms of TIR capture and reimbursement to the developer by the BRA or municipality. The DEQ and/or MSF are not involved in the reimbursement process at all. This is strictly a local process that should be described in the reimbursement agreement between the developer and the BRA and local unit of government. Adequate records should be maintained for auditing purposes.

CHAPTER 4 | WORK PLANS

The work plan is a document that details the proposed project, what specific eligible activities will be undertaken to alleviate Brownfield conditions, their costs and the time frame of the project. If captured school taxes will be used to reimburse the cost of certain environmental response activities or any non-environmental activities, approval of a work plan by the DEQ and/or the MSF is necessary. The MSF Chairperson may approve a work plan with non-environmental eligible activities of \$500,000 or less⁸, rather than going to the full MSF Board approval.

Prior to submission of an Act 381 work plan, we strongly recommend that the appropriate agency representatives be contacted to discuss the project (see agency contacts below). This will help save time on preparation of the work plan, prevent inclusion of ineligible activities that would not be approved, and reduce agency review time. Please do not submit a work plan until the Brownfield plan has been approved.

The official receipt date is the date an administratively complete work plan is received by the MEDC and/or DEQ district office. The agencies will review draft Brownfield and/or work plans at the request of the BRA, but formal review will be conducted after reception of a transmittal letter by the BRA.

Submission

The work plan must be submitted to the DEQ and/or MSF by the BRA and include a signed transmittal letter from the BRA representative. The work plan must include a copy of the Brownfield plan as approved via resolution by the governing body of the municipality, and include a copy of the resolution. For projects that have both DEQ and MSF eligible activities, one work plan that includes both DEQ and MSF eligible activities should be prepared and submitted concurrently to both agencies.

For eligible activities requiring **DEQ** review: Send one (1) unbound, double-sided hardcopy to the Remediation and Redevelopment Division (RRD) in the district office serving your county (see [DEQ/RRD Office Locations map](#) and one (1) unbound, double-sided hardcopy to:

Michigan Department of Environmental Quality
Remediation and Redevelopment Division
Brownfield Redevelopment Unit
Constitution Hall, 5th Floor South
525 West Allegan Street
Lansing, Michigan, 48933
(Mail Code: 76116)

The DEQ may request an electronic copy of the documents as well.

⁸ 125.2665, Section 15 (24)

For eligible activities requiring **MSF** review: Send two (2) unbound, double-sided hardcopies to:

Michigan Economic Development Corporation
Brownfield Program Unit
300 N. Washington Square
Lansing, Michigan, 48913

Questions should be directed to the agency responsible for reviewing the eligible activity.

DEQ – General Contact:

Barb Westmoreland, Brownfield Redevelopment Unit, (517) 284-5169
Ronald Smedley, (517) 284-5153, smedleyr@michigan.gov

Site Specific Contact: Remediation and Redevelopment Division (RRD) staff in the district office serving your county. See [DEQ/RRD Office Locations map](#).

MSF/MEDC – General Contact:

Brent Morgan, Manager, Brownfield and Community Revitalization Program, (517) 373-9347
Dan Wells, Senior Brownfield Program Specialist, (517) 241-4801
Rob Garza, Program Analyst, (517) 373-0209

Review/Determination

The statute specifies different review/response periods depending on the type of eligible activities and which agency is completing the review. They are as follows:

- a. **BEA if requested, and due care activities** – sixty (60) days for DEQ work plan review.
- b. **MSF-eligible activities** – sixty-five (65) days for work plan review.
- c. **Additional response activities** – the statute does not specify a review period; however, work plans must be reviewed within six (6) months under Part 201 of the NREPA. You can expect a response from the DEQ within this timeframe and generally considerably less.
- d. **Additional information requested by DEQ** – forty-five (45) days for DEQ review.

If a response is not received from the appropriate agency within the timeframes indicated above for BEA, due care, and MSF eligible activities, the work plans are considered approved. There is an exception to the BEA/due care review time. See [Section 15\(6\) of Act 381](#) for details.

The DEQ staff will review the work plan for administrative completeness and then determine the following:

- Whether some or all of the activities are due care activities or additional response activities.
- Whether the due care activities and additional response activities are protective of the public health, safety, and welfare and the environment.
- Whether the estimated costs for the activities as a whole are reasonable.

The DEQ may approve additional response activities that are more protective than that required to comply with due care if the activities provide public health or environmental benefit (i.e. cleaning up commercial property to residential criteria). The DEQ approval of additional response activities is dependent on a number of criteria, including, but not limited to, the following:

- The proposed land use.
- The reliability of the proposed restrictions to prevent exposure to contamination.
- The cost of implementing activities minimally necessary to achieve due care compliance, versus the additional cost associated with performing additional response activities.
- The long-term obligations associated with leaving contamination in place and the value of reducing or eliminating these obligations.

The DEQ's response will indicate one of the following determinations:

- An unconditional approval.
- A conditional approval that delineates specific necessary modifications to the work plan including, but not limited to, individual activities to be added or deleted from the work plan and revision of costs.
- If the work plan lacks sufficient information or requires changes, the DEQ will issue a letter stating the necessary additions or changes to the work plan before that activity will be considered by the DEQ.
- A denial if the property is not an eligible property, if the work plan proposes the use of school taxes that benefit a liable party, or for any activity conducted before approval of the brownfield plan. The DEQ will state the reason for the denial. If the DEQ denies all or a portion of a work plan, the BRA may resubmit the work plan.

Response letters will be issued under signature of the DEQ/Remediation and Redevelopment Division District Supervisor.

The statute requires a written response regarding work plan acceptability. You will receive separate written and/or electronic responses from each agency regarding their review and determination.

Multiple Work Plans/Amendments

Subsequent work plans or amended work plan(s) do not require you to re-submit the Brownfield plan or basic project information required by Section 15(2)(b-e) if the Brownfield plan or basic project information remains unchanged. Should a change in the scope of work require changes to the Brownfield plan or basic project information, an entire revised work plan is required for agency review.

Reasonable Costs

The statute requires the agencies to determine whether cost estimates for the proposed activities are reasonable. Proposed activities may be denied on the basis of unreasonably high costs. It is expected that the governing body of the municipality responsible for approving the Brownfield plan will also assure the costs in the Brownfield plan and work plan are reasonable, and will provide justification to the agencies.

The BRA may wish to amend the Brownfield plan (or develop a new work plan if there is enough money approved in the Brownfield plan) to include the additional costs and can either seek approval from the agencies for those costs if they will utilize school tax capture, or approve the additional costs using only local taxes.

Fifteen Percent (15%) Contingency

A maximum fifteen percent (15%) contingency for unforeseen circumstances and cost overruns may be added to the estimated cost of the proposed activities. The contingency should not be calculated on the

costs for Brownfield plan, work plan preparation, or for activities previously conducted. The DEQ and MSF will approve the fifteen percent contingency only on the approved eligible activities.

Administrative Costs

The BRA administrative and operating expenses may be reimbursed with local taxes only. DEQ and/or MSF approval is not required and, therefore, it is optional whether they are included in a work plan.

Interest Costs

Use of captured school taxes for reimbursement of interest costs associated with financing of eligible activities differs by agency. See [Section 13\(17\) of Act 381](#).

MSF will consider interest on principal eligible activities including demolition, lead & asbestos abatement, infrastructure improvements and site preparation on a case-by-case basis for projects that demonstrate a financial need. MSF will support only 5% simple interest. MEDC will determine the level of interest support based on a needs analysis, taking all financing into consideration, including the layering of state and local incentives. Interest must be supported by the local BRA and the interest rate must be included in an approved Brownfield plan. The BRA has the ability to cap the amount of interest and the MSF will not support more than the capped amount. Projects contemplating interest should engage the MEDC early in the planning process (see Appendix C).

If a BRA wants to use school taxes for interest associated with DEQ-eligible activities, the activities must be included in a work plan approved by the DEQ. This includes the BEA, due care activities, additional response activities and environmental insurance. Approval by the DEQ of interest costs is not required; however, the DEQ will allow the same interest rate as the MSF.

Cost Gap Between a Brownfield Site and a Greenfield Site

For each MSF eligible activity, please provide a brief narrative that identifies the cost difference for that activity between redevelopment of a Brownfield site and development of a greenfield site. For certain MSF eligible activities that are necessary on both a Brownfield site and a similar greenfield site, reimbursement with school taxes will be allowed only for the incremental increase in costs to conduct that eligible activity. Please contact the MEDC or visit the [MEDC website](#) for additional requirements.

Example: Infrastructure Improvement activity “Traditional Urban Storm Water Management”; in order to be considered for this activity, document the cost gap by providing the cost of constructing a surface retention pond on a similar nearby greenfield site and subtract that from the cost of installing sub-grade water retention and piping to the stormwater pipes in the public right-of-way.

Prior Approval Required and Excessive Costs

Other than activities identified in Section 13(16)(a), (b), and (c), (e.g., site investigation, completing a BEA, evaluating due care, and Brownfield plan, combined plans, work plan preparation costs, and unanticipated response activities), any eligible activity initiated or completed in advance of a DEQ or MSF work plan approval may be allowed for reimbursement with local only taxes if approved by the local governing body *as per Section 13 (16)(a)*.

The amount of TIR approved by the DEQ (including the 15 percent contingency) is the maximum that can be captured under that particular work plan. The BRA may wish to amend the brownfield plan (or develop a new work plan if there is enough money approved in the brownfield plan) to include the

additional costs and can either seek approval from the DEQ for those costs if they will utilize school tax capture, or approve the additional costs using only local taxes.

Underground Storage Tanks (USTs)

Generally, removal of USTs regulated under [Part 211, Underground Storage Tank Regulations](#), of the NREPA, is not an *environmental* eligible activity, *but may be covered under the MSF non-environmental eligible activity site demolition*. It is recommended that costs for UST removal be reimbursed through local-only taxes due to the potential for complications related to determining environmental vs. non-environmental costs. The property owner is responsible for emptying the tanks and for removal/closure under Part 211.

The DEQ may consider approval of school tax capture for UST removal under the following circumstances:

1. The property is owned by the local unit of government or the state who acquired it involuntarily through tax reversion.
2. The property is owned by the local unit of government who acquired it voluntarily for a nominal fee (e.g., a dollar).
3. The USTs were previously unknown (e.g., they were discovered subsequent to performing adequate pre-purchase due diligence).

Cleanup of contamination from the UST system may be an eligible due care activity or additional response activity. The incremental costs for elements of a newly installed system which are necessary to accomplish an additional response activity may be considered. Compliance with [Part 213, Leaking Underground Storage Tanks](#), of the NREPA, is required for all regulated UST work.

If the UST is not regulated under Part 211 per Section 21101(i), (e.g., farm or residential tank of 1,100 gallons or less for storing motor fuel for noncommercial purposes, heating oil tank used for consumptive use on the premises, etc.), then removal of the product and tank may be eligible as a due care or additional response activity.

Aboveground Storage Tanks (ASTs)

Emptying/purging of ASTs regulated under the Michigan Fire Prevention Code, 1941 PA 207, as amended, and subsequent Executive Reorganization Orders 1997-2 and 1998-2, and the Flammable and Combustible Liquid Rules are not eligible activities. These are the responsibility of the property owner. Removal of the AST and addressing any resulting contamination may be eligible as due care or additional response activities.

DEQ and CRP Grant/Loan, SBT/MBT Tax Credit Coordination

School taxes cannot be used for any eligible activities that are funded by DEQ grants or claimed under state tax credits (e.g., Site Assessment Grant, Brownfield Redevelopment Grant, or either the former Single or Michigan Business Tax Brownfield Redevelopment Credit). If school taxes will be used to repay a DEQ loan, approval of the Act 381 work plan and the loan work plan is required prior to commencing work. In addition, a liable party may not benefit by repayment of the loan with school taxes. Community Revitalization Program (CRP) grants may not, but loans may be, utilized for the eligible activity costs approved under a work plan.

Ineligible Activities/Expenses

In addition to the activities previously mentioned, the following activities and expenses are not eligible for reimbursement with school taxes:

- Legal fees (may be an eligible expense for MSF projects if directly related to MSF eligible activities).
- Permitting fees.
- Site improvements.
- Administration by staff of the local unit of government.
- Land acquisition (except in certain circumstances by a Land Bank).
- Costs incurred for environmental response and all non-environmental activities outside of a DEQ or MSF approved work plan.
- Registration fees, including registration of an underground storage tank.
- Taxes (except sales tax).
- Solid waste disposal (except as contaminated wastes or for structural support issues).
- Equipment purchase, maintenance, and repairs.
- Third party damages.
- Insurance (except environmental insurance as provided in MCL 125.2652(P) of Act 381).

CHAPTER 5 | COMBINED PLANS

A BRA may submit a combined Brownfield and work plan to either, or both, the DEQ and MSF for review. A combined plan contains all of the information required in a separate Brownfield and work plan under one cover, potentially reducing review and approval time. It is required under Act 381 to consult with the DEQ and/or MFS within 30 days prior to the public hearing on the plan.

Instructions on how to develop and submit a combined plan can be found on the [MEDC website](#).

CHAPTER 6 | REPORTING

Annual Report

Brownfield Redevelopment Authorities must submit an annual financial report to the DEQ and MSF, based on the calendar year and will be due beginning in 2014⁹. Reports for the preceding tax year are due from the BRA to the MEDC on August 31 (i.e. calendar 2013 tax revenues are due to the MEDC August 31, 2014). This reporting requirement applies to all existing Brownfield plans approved by the jurisdiction. See Section 16(3)(a-k) for the required information to be provided in the report. MEDC will notify local BRAs of reporting deadlines annually, and send periodic reminders via email prior to the submission deadline.

The MEDC and DEQ will compile the provided information and present a combined report to each member of the legislature. Specific information that the MEDC will need to collect includes the amount and purpose of expenditures of tax increment revenues. Four broad categories of Developer Reimbursement, Administrative Costs, Brownfield Redevelopment Fund Contributions and Local Site Remediation Revolving Fund contributions will be reported with a dollar amount, per project. Under Developer Reimbursement, the BRA will account for environmental response activities and non-environmental activities separately on each project, to a dollar amount. In addition, specific eligible activities (e.g. site preparation, response activities) will be noted as paid for, but not down to a dollar amount. Reporting includes taxable value for each eligible property, capital investment, number of residential units, square footage of renovated property, and number of new jobs.

Owners or developers of projects are still required to submit an annual report to the local BRA, but the BRA may waive the requirement to report (S. 16(7)). If a waiver is utilized it must be provided to DEQ and/or MSF in writing and notarized. The waiver does not absolve the BRA from reporting to DEQ and/or MSF, failure to report annual TIR data to MEDC may result in the lack of MSF support for future projects.

Brownfield Redevelopment Authority reporting to the MEDC will be done via an online portal. Each BRA has a unique account containing associated contact information within the portal, and it is the responsibility of the BRA to provide updated contact information to the MEDC if it changes. Once entered, specific project information can be entered into a standard form that will enable consolidation of the information into a report to be sent to the legislature.

Data to be reported will include tracking of state school, local, and local only taxes collected for reimbursement to developers. Reimbursement must be tracked to indicate the total amount reimbursed for environmental and non-environmental activities. There are also sections that will track specific county taxes, local ISD taxes, outstanding debt, and project specific information related to final use, square footage, etc.

Quarterly Report

In addition, the DEQ and MSF will post a quarterly report on its website that summarizes all the projects approved for school tax capture.

⁹ MCL 125.2666, Section 16(3-5,7)

APPENDIX A | GLOSSARY

The following words and phrases are used in this instruction document. Complete definitions can be found in the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381), or Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

"Additional response activities" means response activities identified as part of a Brownfield plan that are in addition to baseline environmental assessment and due care activities for an eligible property.

"Authority" means a Brownfield Redevelopment Authority created under Act 381.

"Baseline Environmental Assessment" or **"BEA"** is an evaluation of environmental conditions which exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the facility, so that, in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination.

"Baseline Environmental Assessment activities" means those response activities identified as part of a Brownfield plan that are necessary to complete a BEA for an eligible property in the Brownfield plan.

"Blighted" means property that meets any of the following criteria as determined by the governing body:

- (i) Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.
- (ii) Is an attractive nuisance to children because of physical condition, use, or occupancy.
- (iii) Is a fire hazard or is otherwise dangerous to the safety of persons or property.
- (iv) Has had the utilities, plumbing, heating, or sewerage permanently disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
- (v) Is tax reverted property owned by a qualified local governmental unit, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or this state after the property's inclusion in a Brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.
- (vi) Is property owned or under the control of a land bank fast track authority under the land bank fast track act, whether or not located within a qualified local governmental unit. Property included within a Brownfield plan prior to the date it meets the requirements of this subdivision to be eligible property shall be considered to become eligible property as of the date the property is determined to have been or becomes qualified as, or is combined with, other eligible property. The sale, lease, or transfer of the property by a land bank fast track authority after the

property's inclusion in a Brownfield plan shall not result in the loss to the property of the status as blighted property for purposes of this act.

(vii) Has substantial subsurface demolition debris buried on site so that the property is unfit for its intended use.

"Board" means the governing body of an authority.

"Brownfield plan" means a plan that meets the requirements of Section 13 and is adopted under Section 14 of Act 381.

"Due care activities" means those response activities identified as part of a Brownfield plan that are necessary to allow the owner or operator of an eligible property in the plan to comply with the requirements of Section 20107a of the NREPA.

"Facility" means any area, place, or property where a hazardous substance in excess of the concentrations that satisfy the requirements of Section 20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213, of the NREPA, has been released, deposited, disposed of, or otherwise comes to be located.

"Functionally obsolete" means that the property is unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself, or the property's relationship with other surrounding property.

"Governing body" means the elected body having legislative powers of a municipality creating an authority under Act 381.

"Land Bank Fast Track Authority" means an authority created under the land bank fast track act, Public Act 258 of 2003.

"Local taxes" means all taxes levied other than taxes levied for school operating purposes.

"Municipality" means a city; a village; a township in those areas of the township that are outside of a village; a township in those areas of the township that are in a village upon the concurrence by resolution of the village in which the Brownfield would be located; or a county.

"Qualified local governmental unit" means that term as defined in the Obsolete Property Rehabilitation Act (PA 146 of 2000).

"Response activity" means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment, or the natural resources.

"Work plan" means a plan that describes each individual activity to be conducted in order to complete eligible activities and the associated costs of each activity.

APPENDIX B | SAMPLE DOCUMENTS AND RESOLUTIONS

SAMPLE A – Exhibit 1 Resolution of Intent to Create a Brownfield Redevelopment Authority

SAMPLE A – Exhibit 2 Resolution of Concurrence by Municipality to Join County Authority

SAMPLE B Notice of Public Hearing on the Adoption of a Proposed Resolution Establishing an Authority [for publication and posting]

SAMPLE C Resolution Establishing a Brownfield Redevelopment Authority and Appointing Board Members

SAMPLE D Filing Transmittal to Michigan Department of State, Office of the Great Seal

SAMPLE E Bylaws

SAMPLE F Resolution Approving Brownfield Redevelopment Authority Bylaws

SAMPLE G Brownfield Plan

SAMPLE H Notice of Public Hearing on the Adoption of a Brownfield Plan [for publication]

SAMPLE I Notice to All Affected Taxing Jurisdictions

SAMPLE J Resolution Approving Brownfield Plan

SAMPLE A – EXHIBIT 1

_____ [City, Village, Township or County] OF _____

RESOLUTION OF INTENT TO CREATE AND PROVIDE FOR THE
OPERATION OF A BROWNFIELD REDEVELOPMENT AUTHORITY
FOR THE _____ OF _____ PURSUANT TO
AND IN ACCORDANCE WITH THE PROVISIONS OF
ACT 381 OF THE PUBLIC ACTS OF THE
STATE OF MICHIGAN OF 1996, AS AMENDED

At a regular meeting of the _____ [City, Village, Township or County] _____
[Council, Board or Commission] of the _____ of _____, _____ County,
Michigan, held in the _____ [meeting location] of said _____, on the _____ day of
_____ [month], _____ [year]; at _____ p.m.

PRESENT:

ABSENT:

MOTION BY:

SUPPORTED BY:

WHEREAS, the _____ [Council, Board or Commission] of the _____ of
_____ has received and reviewed testimony that there are or may be certain
environmentally distressed, functionally obsolete and/or blighted areas in the _____ of
_____ and that the continued existence of such areas can limit, hinder or delay the
redevelopment or revitalization of properties within the _____ [city, village, township or
county], and, accordingly, that it is in the best interest of the public to facilitate the
implementation of plans relating to the identification and treatment of environmentally
distressed, functionally obsolete and/or blighted areas so as to promote revitalization within the
municipal limits of _____; and

WHEREAS, in order to further such interests, it is appropriate for the _____
[Council, Board or Commission] to create and provide for the operation of a Brownfield
Redevelopment Authority within the _____ of _____ pursuant to and in accordance
with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public
Acts of the State of Michigan of 1996, as amended (the "Act"); and

WHEREAS, pursuant to the Act, this _____ [Council, Board or Commission] is
required (a) to hold a public hearing on the adoption of a proposed resolution creating a
Brownfield Redevelopment Authority under the Act (the "Authority") and (b) to publish notice of
the public hearing in a newspaper of general circulation in the _____ of _____, all
in accordance with Section 4(2) of the Act.

SAMPLE A-1, page 1

Now, therefore, be it resolved that:

1. The _____ [Council, Board or Commission] hereby determines that is in the best interests of the public to promote the redevelopment of environmentally distressed, functionally obsolete and/or blighted areas of the _____ [City, Village, Township or County].
2. The _____ [Council, Board or Commission] hereby declares its intention to create and provide for the operation of the Authority within the _____ of _____ pursuant to and in accordance with the provisions of the Act.
3. A public hearing shall be held before the _____ [Council, Board or Commission] on _____ [month], _____ [year], at _____ p.m. in the _____ [location] at _____ [address], on the adoption of a resolution creating the Authority within the _____ of _____, within the municipal limits of which the Authority shall exercise its powers.
4. The _____ [City, Village, Township or County] Clerk of the _____ of _____ (the "Clerk") shall give notice of the public hearing by causing notice to be published, in the form attached hereto as SAMPLE B – Exhibit 1, in [name of newspaper], a [weekly/daily] newspaper of general circulation in the _____ of _____ day of _____ [month], _____ [year], and the _____ day of _____ [month], _____ [year], and by posting notice of the public hearing, in the form attached hereto as Sample B – Exhibit 2, pursuant to the practice of the Clerk.

AYES:

NAYES:

ABSTAINED:

RESOLUTION DECLARED ADOPTED:

STATE OF MICHIGAN)

)ss.

COUNTY OF _____)

SAMPLE A-1, page 2

I, the undersigned, the duly qualified and acting Clerk of the _____ of _____, county of _____, state of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the _____ {City, Village, Township or County] _____ {Council, Board or Commission] of the _____ of _____ at a regular meeting held on the ____ day of _____ [month], ____ [year], the original of which resolution is on file in my office.

IN WITNESS WHEREOF, I have hereunto set my official signature, this ____ day of _____ [month], ____ [year].

CLERK

_____ of _____

SAMPLE A-1, page 3

SAMPLE A – EXHIBIT 2

_____ [City, Village, Township or County] OF _____

**RESOLUTION CONSENTING TO INCLUSION OF MUNICIPALITY
IN COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY**

At a _____ meeting of the _____ of _____, County of _____, Michigan (the "Local Unit"), held in the Local Unit on _____, (year).

PRESENT: _____

ABSENT:

The following resolution was offered by _____ and supported by _____:

WHEREAS, the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of Michigan of 1996, as amended (the "Act"), authorizes the County of _____ (the "County") to establish a Brownfield Redevelopment Authority; and

WHEREAS, the Board of County Commissioners of the County of _____ has determined that it is the best interest of the County to establish and provide for the operation of a Brownfield Redevelopment Authority pursuant to the Act; and

WHEREAS, the Authority shall exercise its powers as provided by the Act is proposed to consist of all the property located in the boundaries of the County from time to time, subject to such changes as may hereafter be made pursuant to the Act, provided, however, that the Authority does not exercise its power over property located within the boundaries of any city, village or township located in the County unless such city, village or township has adopted a resolution concurring to the inclusion of such property; and,

WHEREAS, the Local Unit has determined that it is in the best interest of the Local Unit to join the Authority, so it permit the property located within its municipal boundaries to be included in the Brownfield Redevelopment Authority of the County of _____.

NOW, THEREFORE, BE IT RESOLVED:

1. The Local Unit hereby agrees to opt into the Authority so that all property located within its municipal boundaries shall be included under the Brownfield Redevelopment Authority of the County of _____.
2. The _____ Clerk shall promptly file a certified copy of this Resolution with the _____ County Clerk.
3. All resolution and parts of resolutions insofar as they conflict with the provisions of this Resolution are hereby rescinded.

SAMPLE A-2, page 1

Upon a vote for the adoption of said Resolution, the vote was:

AYES: _____

NAYES: _____

The Resolution was thereupon declared adopted.

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the _____ of _____, County of _____, State of Michigan, at a meeting held on _____, _____ (year), the original of which is on file in my office and available to the public. Public notice of said meeting was given pursuant to and in compliance with the Open Meetings Act, Act No. 267 of the Michigan Public Acts of 1976, including the case of a special or rescheduled meeting, notice by posting at least 18 hours prior to the time set for said meeting.

Date: _____, (year)

_____ CLERK

SAMPLE A-2, page 2
SAMPLE B

NOTICE OF PUBLIC HEARING

[for publication and posting]

_____ [City, Village, Township of County] OF _____

NOTICE OF PUBLIC HEARING
ON THE ADOPTION OF A PROPOSED RESOLUTION
ESTABLISHING A BROWNFIELD REDEVELOPMENT AUTHORITY
FOR THE _____ OF _____
PURSUANT TO AND IN ACCORDANCE WITH ACT 381 OF THE
PUBLIC ACTS OF THE STATE OF MICHIGAN OF 1996, AS AMENDED

PLEASE TAKE NOTICE THAT a Public Hearing shall be held before the _____
[City, Village, Township or County] _____ [Council, Board or Commission] of the
_____ of _____ on the ____ day of _____ [month], ____ [year], at _____
p.m. in the _____ [location] _____ [address], on the adoption of a
proposed resolution establishing a Brownfield Redevelopment Authority for the _____ of
_____, within the municipal limits of which the Authority shall exercise its powers, all
pursuant to and in accordance with the provisions of the Brownfield Redevelopment Financing
Act, being Act 381 of the Public Acts of the State of Michigan of 1996, as amended.

SAMPLE B, page 1

SAMPLE C

_____ [City, Village, Township or County] OF _____

RESOLUTION ESTABLISHING A
BROWNFIELD REDEVELOPMENT AUTHORITY
FOR THE _____ OF _____
AND APPOINTING BOARD MEMBERS PURSUANT TO AND IN ACCORDANCE WITH
THE PROVISIONS OF ACT 381 OF THE PUBLIC ACTS OF
THE STATE OF MICHIGAN OF 1996, AS AMENDED

At a regular meeting of the _____ [City, Village, Township or County] _____
[Council, Board or Commission] of the _____ of _____, _____ County,
Michigan, held in the _____ [meeting location] of said _____, on the _____
day of _____ [month] _____ [year], at _____ p.m.

PRESENT:

ABSENT:

MOTION BY:

SUPPORTED BY:

WHEREAS, the _____ [City, Village, Township or County] _____ [Council,
Board or Commission] of the _____ of _____, by Resolution adopted on
_____ [month, day], _____ [year], (the "Resolution of Intent"), determined that it is in
the best interest of the public to facilitate the implementation of Brownfield Plans relating to the
identification and treatment of environmentally distressed, functionally obsolete and/or blighted
areas so as to promote revitalization within the municipal limits of _____ and declared its
intention to provide for the operation of a Brownfield Redevelopment Authority for the
_____ of _____ (the "Authority") pursuant to and in accordance with the provisions
of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of
Michigan of 1996, as amended the (the "Act"); and

WHEREAS, on this date, pursuant to and in accordance with the Act and the Resolution
of Intent, the _____ [Council, Board or Commission] held a public hearing, notice of which
was given as required by Section 4(2) of the Act on the adoption of a resolution creating the
Authority; and

WHEREAS, all citizens, taxpayers and property owners of the _____ of
_____ and officials of the affected taxing jurisdictions had the right and opportunity to be
heard at the public hearing on the establishment of the Authority; and

WHEREAS, the _____ [Council, Board or Commission] desires to proceed with
the establishment of the Authority for the _____ of _____ within the municipal limits
of which the Authority shall exercise its powers, all pursuant to and in accordance with the Act.

SAMPLE C, page 1

Now therefore, be it resolved that:

1. **Authority Created.** Pursuant to the authority vested in the _____ [Council, Board or Commission] by the Act, the Authority is hereby established and shall be known as the _____ of _____ Brownfield Redevelopment Authority.

2. **Supervision of the Authority.** The Authority shall be under the supervision and control of a board (the "Board") appointed by the Mayor [or other title of chief executive officer] of the _____ of _____, in accordance with the membership provisions set forth in Section 5(1) of the Act, subject to the approval of the _____ [Council, Board or Commission]. The members of the Board shall hold office, and the Board shall conduct its procedures in accordance with the Act, and, in particular, Section 5 thereof.

3. **Jurisdiction of the Authority.** The Authority shall exercise its powers within the area of the _____ of _____.

4. **Powers and Duties of the Authority.** The Authority shall have the powers and duties to the full extent as provided and in accordance with the Act. Among other matters, the exercise of its powers, the Board shall prepare a Brownfield Plan for eligible property pursuant to Section 13 of the Act and submit the plan to the _____ [Council, Board or Commission] for consideration pursuant to Section 14 of the Act.

5. **Bylaws and Rules of the Authority.** The Authority shall elect officers and adopt bylaws and rules governing its procedures and the holding of its meetings all in accordance with Sections 5(3) and 5(5) of the Act, and shall immediately forward a copy of the bylaws and rules after adoption by the Board to the _____ [Council, Board or Commission] in care of the Clerk of the _____ of _____ (the "Clerk"). The Authority's bylaws and rules shall be subject to the approval of the _____ [Council, Board or Commission]; provided, however, that if the _____ [Council, Board or Commission] fails to either approve or disapprove the Authority's bylaws and rules at its next regular meeting after receipt of a copy thereof by the Clerk, the Authority's bylaws and rules shall be deemed to have been approved by the _____ [Council, Board or Commission] for all purposes.

6. **Director's Bond.** In the event the Board elects to employ a director as authorized by Section 6(1) of the Act, the director, before entering upon the duties of his office, shall, in addition to any other requirements of law, post a bond in the penal sum of \$_____ with a \$_____ deductible payable to the Authority for the use and benefit of the Authority, which shall be approved by the Board and filed with the Clerk. The premium on the bond furnished by the director shall be deemed to be an operating expense of the Authority, payable from funds available to the Authority for expenses of operation.

7. **Form of Approvals.** Except as may otherwise be provided by the Act or other applicable law, approvals by the _____ [Council, Board or Commission] of all matters pertaining to the Authority or its Board shall be by resolution.

8. **Severability.** Should any section, clause or phase of this Resolution be declared by the courts invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof other than the part so declared to be invalid.

9. **Repeals.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SAMPLE C, page 2

10. **Publication.** The Clerk is hereby directed to file a true and complete copy with the Michigan Department of State, Office of the Great Seal, promptly after adoption and to take all other actions incident upon such adoption pursuant to applicable charter or other provisions.

AYES:

NAYES:

ABSTAINED:

RESOLUTION DECLARED ADOPTED:

STATE OF MICHIGAN)

)ss.

COUNTY OF _____)

I, the undersigned, the duly qualified and acting Clerk of the _____ of _____, County of _____, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the _____ [City, Village, Township or County] _____ [Council, Board or Commission] of the _____ of _____ at a regular meeting held on the _____ day of _____ [month], _____ [year], the original of which resolution is on file in my office.

IN WITNESS WHEREOF, I have hereunto set my official signature, this _____ day of _____ [month], _____ [year].

CLERK

_____ of _____

SAMPLE C, page 3

SAMPLE D

[City, Village, Township or County Letterhead]

_____ [month, day], _____ [year]

Michigan Department of State
Office of the Great Seal
7064 Crouner Boulevard
Lansing, MI 48918

Dear Sir or Madam:

Enclosed for filing with the Michigan Department State, Office of the Great Seal, as required by Section 4(3) of Act 381 of the Public Acts of the State of Michigan of 1996, as amended (the "Act") is a true copy of Resolution of the _____ of _____ establishing a Brownfield Redevelopment Authority for the _____ of _____ pursuant to and in accordance with the provisions of the Act.

Sincerely,

Clerk,
_____ of _____

SAMPLE E

BYLAWS OF THE _____ [City, Village, Township or County] OF _____
BROWNFIELD REDEVELOPMENT AUTHORITY

ARTICLE I: Name and Address

Name. The name of the Authority is the _____ [City, Village, Township or County] of _____ Brownfield Redevelopment Authority (hereinafter referred to as the "Authority"). The address of the Authority is _____ [Street, City, State, ZIP].

ARTICLE II: Directors

Section 1. **General Powers.** The business and affairs of the Authority shall be managed by its Board, except as otherwise provided by statute or by these Bylaws.

Section 2. **Board of Directors.** The Board of Directors (hereinafter referred to as the "Board") of the Authority shall consist of not less than five (5) persons and not more than nine (9) persons, unless and EDC, DDA, TIFA or LDFA board was appointed.

Section 3. **Terms, Replacement and Vacancies.** Of the initial members appointed, an equal number, or as near as practicable, shall be appointed for one year, two years, and three years. Thereafter, each member shall serve for a term of three years. Subsequent Directors shall be appointed in the same manner as original appointments at the expiration of each Director's term of office. A Director whose term of office has expired shall continue to hold office until his/her successor has been appointed with the advice and consent of the _____ [City, Village, Township or County] _____ [Council, Board or Commission]. A Director may be reappointed with the advice and consent of the _____ [City, Village, Township or County] _____ [Council, Board or Commission] to serve additional terms. If a vacancy is created by death or resignation, a successor shall be appointed with the advice and consent of the _____ [City, Village, Township or County] _____ [Council, Board or Commission] within thirty (30) days to hold office for the remainder of the term of office so vacated.

Section 4. **Removal.** A Director may be removed from office for inefficiency, neglect of duty, or misconduct or malfeasance, by a majority vote of the _____ [City, Village, Township or County] _____ [Council, Board or Commission] or the Board.

Section 5. **Conflict of Interest.** A Director who has a direct interest in any matter before the Authority shall disclose his/her interest prior to any discussion of that matter by the Authority, which disclosure shall become a part of the record of the Authority's official proceedings. The interested Director shall further refrain from participation in the Authority's action relating to the matter. Each Director, upon

SAMPLE E, page 1

taking office and annually thereafter, shall acknowledge in writing that they have read and agree to abide by this section.

- Section 6. **Meetings.** Meetings of the Board may be called by or at the request of the Chairperson of the Board or any two Directors. The meetings of the Board shall be public, and the appropriate notice of such meetings shall be provided to the public. The Board shall hold an annual meeting in the second calendar quarter of each year at which time officers of the Board shall be elected as provided in Article III, Section 2.
- Section 7. **Notice.** Notice of any meetings shall be given in accordance with the Open Meetings Act (Act No. 267 of the Public Acts of 1976).
- Section 8. **Quorum.** A majority of the members of the Directors then in office constitutes a quorum for the transaction of business at any meeting of the Board, provided, that a majority of the Board present may adjourn the meeting from time to time without further notice. The vote of the majority of the Directors present at a meeting at which a quorum is present constitutes the action of the Board, unless the vote of a larger number is required by statute or by these Bylaws. Amendment of the Bylaws by the Board requires the vote of not less than a majority of the members of the Board then in office.
- Section 9. **Participation by Communication Equipment.** A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this provision constitutes presence at the meeting.
- Section 10. **Committees.** The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the Directors of the Authority. The Board may designate one or more Directors as alternate members of a committee, who may replace an absent or disqualified member at a meeting of the committee. In the absence or disqualification of a member of a committee, the members thereof present at a meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of such an absent or disqualified member. A committee, and each member thereof, shall serve at the pleasure of the Board. A committee so designated by the Board, to the extent provided in the resolution by the Board, may exercise all powers and authority of the Board in the management of the business and affairs of the Authority, except that such committee so may exercise all powers and authority to: (a) recommend to members a dissolution of the Authority, or revocation of dissolution, (b) amend the Bylaws of the Authority, or (c) fill vacancies in the Board.

ARTICLE III: Officers

- Section 1. **Officers.** The officers of the Authority shall be elected by the Board and shall consist of a Chairperson, Vice Chairperson, and Secretary/Treasurer. The Board

may also appoint a Recording Secretary who need not be a member of the Board.

SAMPLE E, page 2

Two or more offices may be held by the same person, but an officer shall not execute, acknowledge, or verify an instrument in more than one capacity if the instrument is required by law or Bylaws to be executed, acknowledged, or verified by two or more officers.

Section 2 **Nomination, Election and Term of Office.** The officers of the Authority shall be elected by the Board at an annual meeting held during the second calendar quarter of each year. Candidates shall be nominated by a nominating committee composed of three members appointed by the Chairperson. The term of each office shall be for one (1) year. Each officer shall hold office until his/her successor is appointed. No person shall hold the same office for more than three successive terms.

Section 3 **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled at any meeting of the Board for the unexpired portion of the terms of such office.

Section 4 **Chairperson and Vice Chairperson.** The Chairperson shall be the chief executive officer of the Authority, but he or she may from time to time delegate all or any part of his/her duties to the Vice Chairperson. He or she, or in his/her absence, the Vice Chairperson, shall preside at all meetings of the Board, he or she shall have general and active management of the business of the Authority and shall perform all the duties of the office as provided by law or these Bylaws. He or she shall be ex-officio a member of all standing committees, and shall have the general powers and duties of supervision and management of the Authority.

Section 5 **Secretary/Treasurer and Recording Secretary.** The Secretary/Treasurer or Recording Secretary shall attend all meetings of the Board and record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. They shall further perform all duties of the office of Secretary/Treasurer as provided by law or these Bylaws. They shall be sworn to the faithful discharge of these duties.

Section 6 **Delegation of Duties of Offices.** In the absence of any officer of the Authority, or for any other reason that the Board may deem sufficient, the Board may delegate, from time to time and for such time as it may deem appropriate, the powers or duties, or any of them, of such officer to any other officer, or to any Director, provided a majority of the Board then in office concurs therein.

Section 7 **Executive Committee.** The Chairperson, Vice Chairperson and Secretary/Treasurer shall comprise the Executive Committee. The Executive Committee, may upon a majority vote, authorize the expenditure of up to \$_____ for any expense listed as an eligible item for expenditure under the approved Authority funding guidelines. The Executive Committee must report any such expenditure to the Board at the next regularly scheduled Board meeting.

ARTICLE IV: Contracts, Loans, Checks and Deposits

Section 1 **Contracts.** The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Authority, and such authority may be general or confined to specific instances.

Section 2 **Loans/Grants.** No grant or loan shall be contracted on behalf of the Authority and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board and approved by the _____ [City, Village, Township or County] _____ [Council, Board or Commission]. Such authority may be general or confined to specific instances.

Section 3 **Checks, Drafts, etc.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Authority, shall be signed by such officer or officers, agent or agents of the Authority and in such manner as shall from time to time be determined by resolution of the Board.

Section 4 **Deposits.** All funds of the Authority not otherwise employed shall be deposited from time to time to the credit of the Authority in such banks, trust companies or other depositories as the Board may select.

ARTICLE V: Fiscal Year

The fiscal year of the Authority shall correspond at all times to the fiscal year of the _____ [City, Village, Township or County] of _____.

ARTICLE VI: Miscellaneous

Section 1 **Seal.** The Board shall provide a corporate seal which shall be the official seal of the Authority.

Section 2 **Waiver of Notice.** When the Board or any committee thereof may take action after notice to any person or after lapse of a prescribed period of time, the action may be taken without notice and without lapse of the period of time, if at any time before or after the action is completed the person entitled to notice or to participation in the action to be taken submits a signed waiver of such requirements.

ARTICLE VII: Amendments

These Bylaws may be altered, amended or repealed by the affirmative vote of a majority of the Board then in office at any regular or special meeting called for that purpose.

I HEREBY CERTIFY that the above Bylaws were adopted the _____ day of _____ [month], _____ [year].

Secretary

SAMPLE E, page 4

SAMPLE F

RESOLUTION APPROVING
BROWNFIELD REDEVELOPMENT AUTHORITY BYLAWS
FOR the _____ [month, day], _____ [year], _____ [City, Village, Township or
County] _____ [Council, Board or Commission] MEETING
_____ OF _____
PURSUANT TO AND IN ACCORDANCE WITH THE PROVISIONS OF ACT 381 OF THE
PUBLIC ACTS OF
THE STATE OF MICHIGAN OF 1996, AS AMENDED

At a regular meeting of the _____ [City, Village, Township or County]
_____ [Council, Board or Commission] of the _____ of _____,
_____ County, Michigan, held in the _____ [meeting location] of said
_____ [City, Village, Township or County] on the _____ day of, _____ [month],
_____ [year], at _____ p.m.

PRESENT:

ABSENT:

MOTION BY:

SUPPORTED BY:

RESOLVED that the _____ [City, Village, Township or County] _____
[Council, Board or Commission], having reviewed the Bylaws of the Board of the
_____ of _____ Brownfield Redevelopment Authority, a public body
corporate established on _____ [month, day] _____ [year], pursuant to the
Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of
Michigan of 1996, as amended (hereinafter the "Act"), which Bylaws were adopted at the initial
organizational meeting of the Board on _____ [month, day], _____ [year], hereby
approves the Bylaws as appended hereto, which are deemed to constitute the rules governing
the procedures and the holding of regular meetings of the Board, as set forth in Section 5(5) of
the Act.

AYES:

NAYES:

ABSTAINED:

RESOLUTION DECLARED ADOPTED.

STATE OF MICHIGAN)
)ss.
COUNTY OF _____)

SAMPLE F, page 1

I, the undersigned, the duly qualified and acting Clerk of the _____ of _____, County of _____, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the _____ [City, Village, Township or County] _____ [Council, Board or Commission] of the City of _____ at a regular meeting held on the _____ day of _____ [month], _____ [year], the original of which resolution is on file in my office.

IN WITNESS WHEREOF, I have hereunto set my official signature, this _____ day of _____ [month], _____ [year].

Clerk

_____ OF _____

SAMPLE F, page 2

SAMPLE G

[Brownfield Plan Cover Page]

**[County, City, Village or Township] of _____
Brownfield Redevelopment Authority**

**Brownfield Plan
For
[Name of Project or Property]
[Address of Project or Property]**

[Name of Authority Director or Chairperson]
[Address]
[Phone Number]

Prepared with the assistance of:

[List others that provided assistance in the preparation of this plan]

Approved by the Brownfield Redevelopment Authority on [enter date approved]
Approved by the governing body of the local jurisdiction on [enter date approved]

SAMPLE G, page 1

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5. BROWNFIELD PLAN ELEMENTS

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- B. Summary of Eligible Activities
- C. Estimate of Captured Taxable Value and Tax Increment Revenues
- D. Method of Financing and Description of Advances Made by the Municipality
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- M. Description of Proposed Use of Local Site Remediation Revolving Fund
- N. Other Material that the Authority or Governing Body Considers Pertinent

EXHIBITS

SCHEDULES

SAMPLE G, page 2

1. INTRODUCTION AND PURPOSE

[In this section, give a general overview of the proposed redevelopment project and the overall benefits to the community.]

The purpose of this plan, to be implemented by the Authority, is to satisfy the requirements for a Brownfield Plan as specified in Act 381 of the Public Acts of the State of Michigan of 1996, as amended, MCL 125.2651 et. seq., which is known as the “Brownfield Redevelopment Financing Act.” Terms used in this document are as defined in Act 381.

2. ELIGIBLE PROPERTY INFORMATION

[Identify the eligible property, including adjacent or contiguous property, including the address(es) and general location, tax parcel number(s), total acreage, existing structure(s) on the property, infrastructure present, etc. A map and legal description(s) should be provided as Exhibit A.]

3. PROPOSED REDEVELOPMENT

[Describe the project including the type of redevelopment (residential, commercial, retail, industrial, mixed use); demolition, construction, renovation, rehabilitation, and historic preservation activities; amount of private investment to be made; and the number of jobs created.]

4. BROWNFIELD CONDITIONS

[Describe how the property was used (residential, commercial, public, or industrial and a brief summary of the Brownfield conditions that provide the basis for eligibility (i.e., known environmental contamination, blighted and/or functionally obsolete characteristics).]

5. BROWNFIELD PLAN ELEMENTS (as specified in Section 13(1) of Act 381)

A. Description of Costs to Be Paid for With Tax Increment Revenues

A description of the costs of the plan intended to be paid for with the tax increment revenues or, for a plan for eligible properties qualified on the basis that the property is owned or under the control of a land bank fast track authority, a listing of all eligible activities that may be conducted for 1 or more of the eligible properties subject to the plan. MCL 125.2663(1)(a)

[Describe the costs of the eligible activities to be paid for with tax increment revenues, including costs incurred by the developer, contingency costs, financing costs, and administrative costs to be incurred by the Authority. Indicate the type of tax increment revenues to be captured and used (i.e., local, school, both). Identify costs incurred or to be incurred prior to Brownfield plan approval that will be reimbursed with local tax increment revenues. Costs should also appear in tabular form (Schedule 1).]

B. Summary of Eligible Activities

Include a list and brief summary of the eligible activities that are proposed for each eligible property or, for a plan for eligible properties qualified on the basis that the property is owned or under the control of a land bank fast track authority, a brief summary of eligible activities conducted for 1 or more of the eligible properties subject to the plan. MCL 125.2663(1)(b)

[Briefly summarize the eligible activities (i.e., developing/preparing Brownfield plan/work plan, baseline environmental assessment, due care, additional response activities, environmental insurance, demolition, lead or asbestos abatement, site preparation, infrastructure improvements, interest, etc.) that are proposed for each eligible property. For a plan for properties owned or controlled by a land bank fast track authority, briefly summarize the eligible activities that may be conducted on 1 or more of the eligible properties.]

C. Estimate of Captured Taxable Value and Tax Increment Revenues

An estimate of the captured taxable value and tax increment revenues for each year of the plan from the eligible property. The plan may provide for the use of part or all of the captured taxable value, including deposits in the local site remediation revolving fund, but the portion intended to be used shall be clearly stated in the plan. The plan shall not provide either for an exclusion from captured taxable value of a portion of the captured taxable value or for an exclusion of the tax levy of 1 or more taxing jurisdictions unless the tax levy is excluded from tax increment revenues in section 2(dd), or unless the tax levy is excluded from capture under section 15. MCL 125.2663(1)(c).

[The estimated captured taxable value for this redevelopment by year and in aggregate should be depicted in tabular form (Schedule 2). Identify whether all or a portion (a percentage) of the captured taxable value will be used. Captured taxable values are determined using the estimated taxable values for the developer's investment (Schedule 3). The estimated current taxable value and initial taxable value, by year and in aggregate, for each taxing jurisdiction should be depicted in tabular form (Schedules 4 and 5, respectively).]

[The estimated tax increment revenues generated, by year and in aggregate, for each taxing jurisdiction should be depicted in tabular form (Schedule 6). If appropriate, the split taxes collected in the summer and winter should also be depicted in tabular form (Schedule 7).]

SAMPLE G, page 4

[The estimated amount of deposits of excess tax increment revenues into the Authority's Local Site Remediation Revolving Fund, by year and in aggregate, should be depicted in tabular form (Schedule 8). If excess school tax increment revenues will be captured pursuant to MCL 125.2663(5), they should be depicted separately from the local tax increment revenues.]

D. Method of Financing and Description of Advances by the Municipality

The method by which the costs of the plan will be financed, including a description of any advances made or anticipated to be made for the costs of the plan from the municipality.

MCL 125.2663(1)(d)

[Describe how the eligible activities will be financed. Indicate the type of tax increment revenues to be captured and used (i.e., local, school, both). Indicate whether interest costs will be reimbursed and, if so, include interest rate and interest amount. Indicate whether school taxes will be used for interest reimbursement. Identify costs incurred or to be incurred prior to Brownfield plan approval that will be reimbursed with local tax increment revenues. If the developer will be financing the eligible costs, a method and agreement for reimbursement to the developer by the Authority should be considered (Schedule 9). If school taxes are to be captured and used, according to an approved DEQ or MSF work plan, the split between captured school and local taxes should be depicted in tabular form (Schedule 10).]

E. Maximum Amount of Note or Bonded Indebtedness

The maximum amount of note or bonded indebtedness to be incurred, if any.

MCL 125.2663(1)(e)

[Identify the maximum amount of a note or bonded indebtedness for eligible activities on the eligible property.]

F. Duration of Brownfield Plan

The duration of the Brownfield plan for eligible activities on eligible property which shall not exceed 35 years following the date of the resolution approving the plan amendment related to a particular eligible property. Each plan amendment shall also contain the duration of capture of tax increment revenues including the beginning date of the capture of tax increment revenues, which beginning date shall be identified in the Brownfield plan and which beginning date shall not be later than 5 years following the date of the resolution approving the plan amendment related to a particular eligible property and which duration shall not exceed the lesser of the period authorized under subsections (4) and (5) or 30 years from the beginning date of the capture of tax increment revenues. The date for the beginning of capture of tax increment revenues may be amended by the

authority but not to a date later than 5 years after the date of the resolution adopting the plan. The authority may not amend the date for the beginning of capture of tax

SAMPLE G, page 5

increment revenues if the authority has begun to reimburse eligible activities from the capture of tax increment revenues. The authority may not amend the date for the beginning of capture if that amendment would lead to the duration of capture of tax increment revenues being longer than 30 years or the period authorized under subsections (4) and (5). If the date for the beginning of capture of tax increment revenues is amended by the authority and that plan includes the capture of tax increment revenues for school operating purposes, then the authority that amended that plan shall notify the department and the Michigan economic growth authority within 30 days of the approval of the amendment. MCL 125.2663(1)(f)

[If tax increment financing is to be used to reimburse for eligible activities, identify the estimated plan length based on the estimated costs of the eligible activities, estimated tax increment revenues captured, and deposit to the Authority's Local Site Remediation Revolving Fund, if applicable. Identify the beginning date (year) of capture which cannot be later than 5 years following Brownfield plan approval by resolution. Plan length cannot exceed 35 years and the capture of tax increment revenues is the lesser of the period authorized under subsections (4) and (5) or 30 years from the beginning date of capture.]

G. Estimated Impact of Tax Increment Financing on Revenues of Taxing Jurisdictions

An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the eligible property is located. MCL 125.2663(1)(g)

[Describe, in tabular form, the estimated amount of tax increment revenues to be captured by the Authority for this redevelopment from each taxing jurisdiction (Schedule 6).]

H. Legal Description, Property Map, Statement of Qualifying Characteristics and Personal Property

A legal description of the eligible property to which the plan applies, a map showing the location and dimensions of each eligible property, a statement of the characteristics that qualify the property as eligible property, and a statement of whether personal property is included as part of the eligible property. If the project is on property that is functionally obsolete, an affidavit signed by a Michigan Certified Assessing Officer (former level 3 assessor) or Michigan Master Assessing Officer (former level 4 assessor), which states that it is the assessor's expert opinion that the property is functionally obsolete and the underlying basis for that opinion. MCL 125.2663(1)(h)

[Include a legal description of the property, property size (acres), a scaled map showing eligible property dimensions, a statement of the Brownfield conditions that qualify the property as eligible (i.e., environmental contamination that makes the property a facility, how it meets the blighted criteria, or what makes it functionally obsolete as determined by a Michigan Certified Assessing Officer (former level 3 assessor) or Michigan Master Assessing Officer (former level 4 assessor) (Exhibit B)), identify adjacent or contiguous property included in the plan), and whether or not there is any personal property included as part of the eligible property (Exhibit C).]

SAMPLE G, page 6

I. Estimates of Residents and Displacement of Families

Estimates of the number of persons residing on each eligible property to which the plan applies and the number of families and individuals to be displaced. If occupied residences are designated for acquisition and clearance by the authority, the plan shall include a demographic survey of the persons to be displaced, a statistical description of the housing supply in the community, including the number of private and public units in existence or under construction, the condition of those in existence, the number of owner-occupied and renter-occupied units, the annual rate of turnover of the various types of housing and the range of rents and sale prices, an estimate of the total demand for housing in the community, and the estimated capacity of private and public housing available to displaced families and individuals. MCL 125.2663(1)(i)

[List the estimates of the number of persons residing on each eligible property to which this plan applies, the number of families to be displaced and a demographic survey and information regarding housing in the community. Indicate if there are none and not applicable.]

J. Plan for Relocation of Displaced Persons

A plan for establishing priority for the relocation of persons displaced by implementation of the plan. MCL 125.2663(1)(j)

[Include a plan for relocation of displaced persons or indicate if not applicable.]

K. Provisions for Relocation Costs

Provision for the costs of relocating persons displaced by implementation of the plan, and financial assistance and reimbursement of expenses, including litigation expenses and expenses incident to the transfer of title, in accordance with the standards and provisions of the federal uniform relocation assistance and real property acquisition policies act of 1970, Public Law 91-646. MCL 125.2663(1)(k)

[Describe provisions for the costs of relocating persons displaced by the implementation of the plan or indicate if not applicable.]

L. Strategy for Compliance with Michigan's Relocation Assistance Law

A strategy for compliance with 1972 PA 227, MCL 213.321 to 213.332. MCL 125.2663(1)(l)

[Include a strategy for compliance with the Relocation Assistance Act, 1972 PA 227, (Sections 213.321 to 213.332 of the Michigan Compiled Laws) or indicate if not applicable.]

SAMPLE G, page 7

M. Description of Proposed Use of Local Site Remediation Revolving Fund

A description of proposed use of the local site remediation revolving fund. MCL 125.2663(1)(m)

[Describe the proposed use of the proceeds of the Authority's Local Site Remediation Revolving Fund.]

The proceeds of the Brownfield Redevelopment Authority's Local Site Remediation Revolving Fund will be used in accordance with the Act. The Authority currently anticipates using the fund to pay eligible activity costs at other eligible properties included in the plan, including, but not limited to the properties included in this plan, as well as other eligible properties which may be included in the plan as amended in the future.

N. Other Material that the Authority or Governing Body Considers Pertinent

Other material that the authority or governing body considers pertinent. MCL 125.2663(1)(n)

[Include any other material required by the Authority or Governing Body to be included in this plan or indicate that none is required.]

SAMPLE G, page 8

EXHIBITS

A. Legal Description and Map of the Eligible Property Described in Sections 2 and 5(H) of this Plan

B. Affidavit Signed by Michigan Certified Assessing Officer (former level 3 assessor) or Michigan Master Assessing Officer (former level 4 assessor) Stating Eligible Property is Functionally Obsolete

C. Description of Personal Property that is part of the Eligible Property

SCHEDULES

SCHEDULE 1 Summary of Eligible Activities Costs

SCHEDULE 2 Estimated Captured Taxable Values

SCHEDULE 3 Investment Schedule and Projected Taxable Values

SCHEDULE 4 Estimated Current Taxable Values for Each Capturable Taxing Jurisdiction

SCHEDULE 5 Initial Taxable Values for Each Capturable Taxing Jurisdiction

SCHEDULE 6 Estimated Tax Increment Revenues Captured by Each Capturable Taxing Jurisdiction

SCHEDULE 7 Summer and Winter Collections of Capturable Taxes

SCHEDULE 8 Deposit to Authority's Local Site Remediation Revolving Fund

SCHEDULE 9 Reimbursement Schedule According to Agreement

SCHEDULE 10 Capturable School and Local Operating Taxes

SAMPLE G, page 9

Schedule 1 – Summary of Eligible Activities Costs

<u>Non-Environmental Activities</u>	<u>MSF Request</u>
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Demolition
Lead/Asbestos Abatement
Infrastructure Improvements
Site Preparation

SUBTOTAL

Contingency (indicate %)*
Brownfield Plan/Work Plan Preparation**
Interest***

MSF GRAND TOTAL

<u>Environmental Response Activities</u>	<u>DEQ Request</u>
--	--------------------

Baseline Environmental Assessment
Due Care Activities
Additional Response Activities

SUBTOTAL

Contingency (indicate %)*
Brownfield Plan/Work Plan Preparation**
Interest****

DEQ GRAND TOTAL

**The MEDC and DEQ allow up to a 15% contingency.*

***The DEQ and MEDC allow up to a total of \$20,000 for preparation of Brownfield Plans and/or Act 381 Work Plans.*

****Upon request, the MSF Board will consider interest in accordance with the current MEDC Brownfield Program Guidelines. See Appendix C.*

*****Interest on DEQ activities shall be in accordance with the current MEDC Brownfield Program Guidelines See Appendix C.*

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SAMPLE H

NOTICE OF PUBLIC HEARING
[for publication]

_____ [City, Village, Township or County] OF _____

NOTICE OF PUBLIC HEARING
ON THE ADOPTION OF A BROWNFIELD PLAN
FOR THE _____ OF _____
PURSUANT TO AND IN ACCORDANCE WITH ACT 381 OF THE
PUBLIC ACTS OF THE STATE OF MICHIGAN OF 1996, AS AMENDED

PLEASE TAKE NOTICE THAT a Public Hearing shall be held before the _____
[City, Village, Township or County] _____ [Council, Board or Commission] of the
_____ of _____ on the _____ day of _____ [month], _____ [year], at
_____ p.m. in the _____ [location] _____ [address], on the
adoption of a Brownfield Plan for the _____ of _____, within which the Authority
shall exercise its powers, all pursuant to and in accordance with the provisions of the Brownfield
Redevelopment Financing Act, being Act 381 of the Public Acts of the State of Michigan of
1996, as amended. The description of the proposed Brownfield property is:

Land situated in the _____ of _____, County of _____, State of
Michigan, described as follows: **[description of property to which the plan applies in
relation to existing or proposed highways, streets, streams or otherwise].**

This description of the property along with any maps and a description of the Brownfield Plan
are available for public inspection at _____.

Please note that all aspects of the Brownfield Plan are open for discussion at the public hearing.

SAMPLE I

NOTICE TO ALL TAXING JURISDICTIONS
THE _____ (city/village/township/county council/board/commission) OF
_____ PROPOSE TO APPROVE A BROWNFIELD PLAN FOR THE
_____ PROPERTY LOCATED AT _____,
MICHIGAN PRESENTLY KNOWN AS _____

The _____ (village/city/township council/board/commission) of _____ has established a Brownfield Redevelopment Authority (the "Authority") in accordance with the Brownfield Redevelopment Act., Act 381 Public Acts of the State of Michigan of 1996, as amended (the "Act").

The Act was enacted to provide means for local units of government to facilitate the revitalization of environmentally distressed, functionally obsolete and/or blighted areas. The Authority Board has prepared and adopted a Brownfield Plan related to the redevelopment of the _____ property located at _____, _____ Michigan. The proposed reuse for this property is _____. This had been determined to contain hazardous substances as defined under existing environmental laws and regulations or is determined by an assessor to meet the criteria of functionally obsolete or is blighted. This document serves to notify local taxing units of the _____ (village/city/township/county's) intent to approve a Brownfield Plan for the noted property.

The Act permits the use of the tax increment financing in order to provide the Authority with the means of financing the redevelopment projects included in a Brownfield Plan. Tax increment financing allows the Authority to capture tax revenues attributable to increases in the taxable value of real and personal property located on the "eligible property," which may include certain adjacent or contiguous parcels. Increases in taxable value may be attributable to various factors, including remediation, new construction, rehabilitation, remodeling, alterations, additions, and the installation of personal property on the contaminated, functionally obsolete or blighted property.

The plan as presented for adoption proposes **[no capture/capture of tax increment revenues (but/and)]** does allow for the _____ (name of qualified taxpayer) to apply for a Michigan Business Tax Credit.

The plan will be adopted at the _____, (year) meeting of the _____ (village/city/township council/county board of commissioners) held at _____ p.m. in the _____ Building. If you have any questions or comments concerning the Brownfield Redevelopment Authority you may attend the meeting and express those concerns during the public comment period. You may also direct inquires to the _____ (village/city/township council/county board of commissioners) office or to _____ at () _____.

Dated: _____, (year) _____

_____ Clerk

SAMPLE J

_____ [City, Village, Township or County] OF _____

RESOLUTION APPROVING A BROWNFIELD PLAN
FOR THE _____ OF _____ PURSUANT TO AND
IN ACCORDANCE WITH THE PROVISIONS OF ACT 381 OF THE
PUBLIC ACTS OF THE STATE OF MICHIGAN OF 1996, AS AMENDED

At a regular meeting of the _____ [City, Village, Township or County]
_____ [Council, Board or Commission] of the _____ of _____,
_____ County, Michigan, held in the _____ [location] of said _____
[City, Village, Township or County] on the _____ day of _____ [month], _____ [year], at
_____ p.m.

PRESENT:

ABSENT:

MOTION BY:

SUPPORTED BY:

WHEREAS, the Brownfield Redevelopment Authority (the "Authority") of the
_____ of _____, pursuant to and in accordance with the provisions of the
Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of
Michigan of 1996, as amended (the "Act"), has prepared and recommended for approval by the
_____ [City, Village, Township or County] _____ [Council, Board or
Commission], a Brownfield Plan (the "Plan") pursuant to and in accordance with Section 13 of
the Act; and

WHEREAS, the Authority has, at least ten (10) days before the meeting of the
_____ [City, Village, Township or County] _____ [Council, Board or Commission]
at which this resolution has been considered, provided notice to and fully informed all taxing
jurisdictions (the "Taxing Jurisdictions") which are affected by the Financing Plan about the
fiscal and economic implications of the proposed Financing Plan, and the _____ [Council,
Board or Commission] has previously provided to the Taxing Jurisdictions a reasonable
opportunity to express their views and recommendations regarding the Financing Plan and in
accordance with Sections 13(13) and 14(1) of the Act; and

WHEREAS, the _____ [Council, Board or Commission] has made the following
determinations and findings:

- A. The Plan constitutes a public purpose under the Act;
- B. The Plan meets all of the requirements for a Brownfield Plan set forth in Section 13 of the
Act;
- C. The proposed method of financing the costs of the eligible activities, as described in the Plan,
is feasible and the Authority has the ability to arrange the financing;

SAMPLE J, page 1

D. The costs of the eligible activities proposed in the Plan are reasonable and necessary to carry out the purposes of the Act;

E. The amount of captured taxable value estimated to result from the adoption of the Plan is reasonable; and

WHEREAS, as a result of its review of the Plan and upon consideration of the views and recommendations of the Taxing Jurisdictions, the _____ [Council, Board or Commission] desires to proceed with approval of the Plan.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. **Plan Approved.** Pursuant to the authority vested in the _____ [Council, Board or Commission] by the Act, and pursuant to and in accordance with the provisions of Section 14 of the Act, the Plan is hereby approved in the form attached as Exhibit "A" to this Resolution.

2. **Severability.** Should any section, clause or phrase of this Resolution be declared by the Courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof other than the part so declared to be invalid.

3. **Repeals.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed:

AYES:

NAYES:

ABSTAINED:

RESOLUTION DECLARED ADOPTED.

STATE OF MICHIGAN)

)ss.

COUNTY OF _____)

I, the undersigned, the duly qualified and acting Clerk of the _____ of _____, County of _____, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by _____ [Council, Board or Commission] of the _____ of _____ at a regular meeting held on the ____ day of _____ [month], _____ [year], the original of which resolution is on file in my office.

IT WITNESS WHEREOF, I have hereunto set my official signature, this ____ day of _____ [month], _____ [year].

CLERK

_____ OF _____

SAMPLE J, page 2

APPENDIX C | INTEREST GUIDANCE

Interest Policy

The MEDC will consider interest on principal Michigan Strategic Fund eligible activities on a case by case basis for projects that demonstrate a financial need. MEDC will only support simple interest at not more than 5%. The MEDC will determine its level of interest support based on a needs analysis, taking into account all financial incentives into consideration, including layering of other state and local incentives. Interest must be supported by the local BRA, and the interest rate must be included in the Brownfield plan. The BRA has the ability to cap the amount of interest, and the MEDC will not support more than the cap. Projects contemplating interest should engage the MEDC early in the planning process.

Interest Calculation Methodology

In an effort to make the calculating the interest on eligible activities uniform and easily understandable, the Brownfield program is providing an interest dollar amount based on the estimated MSF and DEQ principal eligible activity costs, the interest rate included in the Brownfield plan, and the estimated number of years it will take to pay off the principal eligible activities. The total interest dollar amount is divided proportionately between the MSF and DEQ based on eligible activity costs. Interest is calculated using a loan amortization schedule, similar to calculating a mortgage, or car loan payment.

Principal eligible activities include:

- MSF – Demolition, Lead & Asbestos Abatement, Infrastructure Improvements, Site Preparation.
- DEQ – Baseline Environmental Assessment, Due Care Activities, Additional Response Activities, Environmental Insurance.

Interest Calculation Spreadsheet Instructions

Download the [current Interest Calculator](#). On the “entry page” tab, enter the following information:

1. Project Name
2. Current date
3. MSF principal activity costs (in dollars)
4. DEQ principal activity costs (in dollars)
5. Interest % (rate approved by BRA in the Brownfield plan)
6. Number of years to pay off loan amount
 - Include a cumulative tax increment revenue line on the TIF table that shows the accumulation of all state and local revenues each year.
 - Based on the cumulative capture, determine the number of years to pay off MSF and DEQ principal eligible activity costs.
 - Calculate payoff years prior to applying any tax abatements (see above regarding the layering of incentives).
7. First year of capture
8. Whether or not interest was capped by BRA (enter “Y” or “N”)
 - If “yes”, enter the maximum dollar amount approved for interest in the Brownfield plan.
 - If “no”, enter \$10,000,000. The spreadsheet will pick the lower of the two values (the capped amount or the calculated amount); entering \$10,000,000 as the capped amount will prevent calculation errors.

The amortizations schedule will populate an interest dollar amount and will divide it proportionally between MSF and DEQ based on the eligible activity amount for each agency. The MSF will approve interest on MSF activities only.

Interest will not be approved for Brownfield or work plan preparation costs.

In the event that a DEQ loan is being used in conjunction with TIF, the current DEQ loan interest rate will be used to calculate interest on DEQ activities instead of the interest rate approved in the Brownfield plan. Contact DEQ for current loan rates.

APPENDIX D | MSF ELIGIBLE ACTIVITY GUIDANCE

This appendix is intended to be used as a “road map” to guide the reader through the technical approaches and the criteria used to evaluate projects proposed to the MSF. This guidance will also facilitate consistent, accurate, efficient and timely completion of a project’s approval process where the capture of state school taxes is desired. The MEDC Brownfield Redevelopment Program will evaluate MSF eligible activities for each particular project, taking into consideration all the facts and circumstances of a site, under the authority of applicable laws, regulations and established policy. No provision of this guidance document should be construed to limit the MSF’s authority to require additional information based upon site-specific and project conditions. This guidance document shall replace and supersede any previously established guidance document. Upon a detailed evaluation of any proposed MSF eligible activity, the MSF will make a determination of eligibility for state school tax capture based upon site specific Brownfield related conditions, other relevant factors and the information below.

Demolition, that is not an environmental response activity (i.e. related to contamination cleanup), and Lead and Asbestos Abatement are eligible activities for all eligible properties statewide. However, Infrastructure Improvements and Site Preparation eligible activities are only available on eligible properties located within a Qualified Local Governmental Unit ([QLGU](#)).

Demolition Review Criteria

This activity is available statewide. Potential MSF eligible demolition activities include Building Demolition and Site Demolition that are not environmental response activities. Include the size, type, location, and number of buildings, structures or improvements to be demolished and, if applicable, recycling/disposal practices. These requirements apply to both Building Demolition and Site Demolition as follows:

Building Demolition (interior or partial/whole building) — Activities include but are not necessarily limited to: pre-demolition audit or survey; deconstruction or select demolition of building elements (products or materials) to be reused or recycled; demolition of a building; proper disposal of non-reusable or non-recyclable building elements; recycling of demolition debris (such as concrete and brick) to produce recycled aggregates if conducted on-site for re-use; foundation and basement removals; dewatering during foundation and basement removals; sheeting/shoring to protect adjacent buildings, structures or improvements during foundation and basement removals; fill; compaction, and; rough grading to balance the site where the former building was located.

Site Demolition — Activities include, but are not necessarily limited to: removal of abandoned utilities; underground storage tanks¹⁰; parking lots; roads; curbs and gutters; rail spurs; sidewalks; bike paths; other similar or related structure or improvement; fill, compaction, and rough grading to balance the site where the former structures or improvements were located at the discretion of the MEDC and approval by the MSF.

¹⁰ Note that only non-environmental costs related to UST removal may be approved by MSF.

MSF may consider professional fees related to geotechnical, architectural, engineering, design, legal or other professional fees, as long as the soft costs are directly related to building and/or site demolition activities. In addition, costs related to historic building survey, historic evaluation and historic nomination are considered eligible.

Lead and Asbestos Abatement Review Criteria

This activity is available statewide. MSF eligible lead and/or asbestos abatement activities may be allowed during building demolition activities or as a requirement to renovate an existing structure. For lead and/or asbestos abatement, include the location, number of buildings, structures or improvements to be abated, the procedure, and practices. To successfully complete the MSF eligible lead and/or asbestos abatement activities, the assessing, surveying, sampling, reporting and abatement work are considered allowable activities.

MSF may consider professional fees related to geotechnical, architectural, engineering, design, legal or other professional fees, as long as the soft costs are directly related to lead and/or asbestos abatement.

Infrastructure Improvements Review Criteria

This activity is only available to [Qualified Local Governmental Units](#). Describe why infrastructure improvements are necessary for the redevelopment project. Provide legible maps showing the location of the infrastructure improvements relative to the project, both within the public right-of-way, or on private property, as applicable. As appropriate, identify on a per unit cost basis the improvements and describe the size and scale of the project in terms of the linear feet, square footage or other appropriate measures.

Upon a detailed evaluation of any proposed infrastructure improvements, the MSF will make a determination of eligibility for state school tax capture provided the infrastructure improvements are publicly owned and maintained, support the project and also serve others/public. An exception to the requirement to be in public right-of-way and publicly maintained and operated is in the case of underground and/or vertical parking and urban storm water management systems, which may be located on private or public land that meet MSF policy as outlined below. Infrastructure improvements can also extend into private property provided there is a dedicated easement or the area of infrastructure improvements is deeded to the governing body.

Potential eligible infrastructure improvements include but are not necessarily limited to:

<i>Public Right-of-Way Only</i>	<i>Public Right-of-Way or Private</i>
Bike Paths	Vertical Parking Decks, Integrated and Underground parking (see below)
Boardwalks	
Bridges	
Curbs and Gutters	
Landscaping	
Lighting	Urban storm water management systems <ul style="list-style-type: none"> • Traditional (see below) • Low Impact design (see below)
Marinas	
Park/Seating Areas	
Public Rail Lines	
Roads	

<i>Public Right-of-Way Only</i>	<i>Public Right-of-Way or Private</i>
Sanitary sewer mains	
Sidewalks	
Signage	
Storm Sewers	
Water mains	

Similar improvements may be considered, at the discretion of the MEDC and with approval by the MSF. Infrastructure improvements do not include: sanitary sewer leads or taps; water leads or taps; electric service; or project communication lines (including telephone networks, fiber optics, cable lines, etc.) into the eligible property.

Vertical, Underground, and Integrated Parking Structures — Soil removal and transportation costs will be permitted for Underground and Vertical Parking, as long as the soils are not subject to environmental response activities under DEQ authority. Parking decks that integrate building foundations may include the cost for that portion of the foundations that exceed the estimated cost for a typical slab foundation. Parking structures that contain shared elements (e.g. elevators) within a larger building may request the costs that are specific to the parking structure only.

Urban Storm Water Management System: Traditional — This activity seeks to capture stormwater and divert or slow its discharge to the municipal sewer system during a storm event. This activity may be considered in situations where an increase in urban density is desired and limited space requires underground retention, or similar systems. Costs included under this activity will be considered only if they exceed costs that would be incurred to construct a storm water retention system on a similarly scaled greenfield site, and when appropriate design information and support, in the opinion of a licensed Professional Engineer (P.E.), is provided. This activity does not include surface retention ponds in non-urban areas.

Urban Storm Water Management System: Low Impact Design (LID) — This activity covers 100% of the costs that manage storm water by mimicking the pre-settlement hydrologic cycle of a site. Storm water runoff is detained and infiltrated, evaporated, or used close to its source. The use of these LID stormwater management practices may be allowed when appropriate design information and support, in the opinion of a licensed Professional Engineer, is provided. The activity does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration practices, such as swales or roadside channels designed for conveyance and pollutant removal only.

Infiltration activities may include installing a device or practice such as a dry well, infiltration trench or berm, subsurface infiltration bed, bio retention (rain garden) area, level spreader, or permeable pavement with an associated system to retain the water onsite or designed specifically to encourage infiltration, as long as due care is undertaken to prevent the spread of contamination, if present. Stormwater reuse may include purification equipment for and the harvesting of rainwater in cisterns (including underground systems), rain barrels or other devices to reduce use of potable water used for landscape irrigation, fire suppression, and other uses. Evapotranspiration techniques to return water to the atmosphere either through evaporation or by plants may also be considered. Activities include

vegetated filter strips, roofs and swales designed specifically for mitigation of storm water. Refer to the “Low Impact Development Manual for Michigan”, SEMCOG, 2008¹¹.

Infrastructure Improvement Soft Costs — MSF may consider professional fees related to geotechnical, architectural, engineering, design, legal or other professional fees, as long as the soft costs are directly related to private investment for infrastructure improvements. Soft costs generated by municipal employees related to infrastructure improvement are not considered eligible costs.

Site Preparation Review Criteria

This activity is only available to [Qualified Local Governmental Units](#). Provide maps showing the location of the site preparation activities. As appropriate, include enough detail for the MEDC to evaluate each of the proposed site preparation activities, such as the size, type, location, or number and describe on a linear feet basis, square footage or other appropriate measures. Potentially eligible site preparation activities include:

<i>Site Preparation Activity</i>	<i>Guidance</i>
Staking related to MSF eligible activities	Prior to the commencement of site work, construction staking may be allowed for the completion of such items as: Clearing and Grubbing; Land Balancing; Grading; Excavation tasks; Cut and Fill operations; Geotechnical Engineering; Erosion Controls for the location, alignment and elevation of Foundations, Structures, Underground Parking, Multilevel Parking Structures, Urban Storm Water Management, Retaining Walls, Temporary Sheeting/Shoring; or during the Relocation of Existing Utilities.
Geotechnical Engineering	A method in which to obtain and determine soil type and/or stability. If Brownfield site conditions warrant, as determined by a licensed Professional Engineer(P.E.), geotechnical engineering may be allowed and may include investigating existing subsurface conditions and materials; determining their physical/mechanical and chemical properties that are relevant to the project, assessing risks posed by site conditions; designing earthworks and structure foundations; and monitoring site conditions, earthwork and foundation construction. Sometimes, geophysical methods may be used to obtain data about sites. Subsurface exploration usually involves soil sampling and laboratory tests of the soil samples retrieved.
Clearing and Grubbing	For some projects, the removal of organic matter including vegetative cover and topsoil within the limits of the proposed work and removal of the material to a depth which is sufficient to permit the construction of the structure, utility or road in accordance with the plans may be allowed. Grubbing means to disturb the soil by removing the vegetative cover including its root mass. Vegetative Cover means grasses, shrubs, trees, and other vegetation which holds and stabilizes soil. This task shall include the proper recycling, reuse and/or disposal of the cleared and grubbed organic matter including vegetative cover and topsoil.

¹¹ <http://www.semcog.org/lowimpactdevelopment.aspx>

Temporary Construction Access and/or Roads	Temporary construction access and/or roads may be allowed and may include clearing the work area of all vegetation (<i>see Clearing and Grubbing</i>), roughing in the road by cutting out all unsuitable soils, grading, subgrade preparation, placement of the fill material deposited and compacted for the completion of the roadbed.
Temporary Facility	A structure or use permitted by the local building codes to exist during periods of construction, development, land balancing or soil extraction, or for special events during site preparation activities may be allowed.
Temporary Traffic Control	This task may be allowed and may include those items necessary to control the flow of traffic as required and approved by governing authorities. Items required may include road closure, signage, barricades, lights, guards or flaggers.
Temporary Erosion Control	Temporary construction site erosion & sediment control practices intended to minimize the amount of soil and other material carried from the site by stormwater runoff where the construction activities do not include the construction of a building. These can include structural measures, non-structural measures, vegetative planting or management practices. Specifically, these temporary measures allowed may include the installation of silt fence, utilizing manhole treatment devices, the construction of silt traps, the mulching and temporary planting of areas exposed by grading, the construction of diversions, channel linings, grade stabilization structures and bank protection structures.
Temporary Site Control (i.e. security, fencing, lighting)	In certain instances, it may be necessary to secure the project site to protect human health or the project investment. Only temporary site control measures may be allowed and may include furnishing and installing fencing, posts, gates, locking devices, guardrails, signage, or lighting.
Excavation for Unstable Material (i.e. Urban or Historic Fill)	<p>The removal of the unstable material may be allowed when a site is found to consist of unstable material that will, in the opinion of a licensed Professional Engineer (P.E.) and with appropriate testing/data to support said opinion, not provide adequate structural support.</p> <p>Specifically, this task is for the purposes of removing Urban or Historic Fill and as a part of Foundation Work to Address Special Soil Concerns. Urban or Historic Fill material means non-indigenous material, deposited or disposed of which is a deterrent/disincentive to redevelopment of a site, and may include: existing basements, below grade structures, foundations (if not part of the MSF eligible activity "Demolition"); construction debris; dredge spoils; and/or demolition debris. Urban or Historic Fill material does not include any material which could be included in an Act 381 Work Plan as a DEQ eligible activity. In addition, Urban or Historic Fill material does not include a municipal solid waste disposal site.</p>

Foundation Work to Address Special Soil Concerns	<p>Based upon the load characteristics of the structure and the properties of the soils from the Brownfield conditions at the eligible property, foundation systems that are designed in the safest and most economical manner to allow for the construction of the structure may be allowed. This foundation work to address special soil concerns shall be validated by a licensed Professional Engineer (P.E.) and shall be supported with appropriate testing/data to evidence said opinion.</p> <p>Reimbursement with school taxes will be allowed only for the <u>incremental increase</u> in costs to address special soil concerns. In order to be considered for this activity, <u>document the cost gap</u> by providing the cost of constructing the foundation on a similar nearby Greenfield site containing indigenous soil material and the selected Brownfield site.</p>
Fill	<p>Where: (1) the removal of the unstable material has occurred as outlined above (see <i>Excavation for Unstable Material</i>), (2) an open excavation or void below grade has been created to remove the foundation or basement of a building as a part of the MSF eligible activity “Demolition”, or (3) any below grade void created as a result of any Geotechnical Engineering task as outlined above; the addition or replacement of soils (or other approved material) shall be allowed. This includes placement and the compaction of fill materials, and shall be performed by any reasonable method approved by a licensed Professional Engineer (P.E.) to achieve the required soil strength (density).</p>
Dewatering Related to MSF Eligible Activities	<p>A method or operation in which water is removed due to a high water table level only during Excavation for Unstable Material, Excavation to Support Underground Parking, Foundation Work to Address Special Soil Concerns, Fill, or Urban Storm Water Management tasks as outlined above.</p>
Land Balancing	<p>The process of filling a lower area with soil or other acceptable material from another on-site location that is higher in accordance with an approved site plan.</p>
Grading	<p>Changing the natural cover or topography of the land, including the movement or placement of soil from excavation, construction or land balancing, and cut and fill activities. Includes reasonable Mass Grading of the entire project site.</p>
Relocation of Active Utilities	<p>Due to an eligible property’s previously developed condition, private or public utilities located within the legally established parcel boundaries of an eligible property that must be removed or relocated as a result of the new development, and that are an identified hindrance to the new development plans, may be allowed. The relocation of existing utilities may include overhead utilities; burial of overhead utilities (including electrical and phone lines); excavating for the utilities removal; excavating and the replacement of that utility; backfill material for the void created from the original utilities’ removal; backfill material around the relocated utility; placement of the backfill material, and/or the compaction of the backfill material as outlined below (See <i>Compaction & Sub-base Preparation</i>).</p>

Compaction & Sub-base Preparation related to MSF Eligible Activities	This task is allowed upon demonstration that this work is required on-site as a result of Excavation for Unstable Material, Foundation Work to Address Special Soil Concerns, or Relocation of Existing Utilities as outlined above. Sub-base preparation and compaction of approved materials shall be performed by any reasonable method approved by a licensed Professional Engineer(P.E.) to achieve the required soil strength (density) as is desired under roads, utilities or structures.
Cut & Fill Operations	Cut and fill operations may be allowed where specific site conditions warrant the use of this task as determined by a licensed Professional Engineer (P.E.).
Retaining Walls in Downtown Areas	In downtown areas where an increase in urban density is desired, structures that hold back the earth, stabilize soil from down-slope movement or erosion and provide support for vertical or near-vertical grade changes may be considered. The use of retaining walls may be allowed when it is demonstrated that their use will substantially reduce the amount of grading due to site-specific conditions as determined by a licensed Professional Engineer (P.E.).
Temporary Sheeting/Shoring	The temporary measure of bracing, sheeting or shoring which is necessary to address special soil concerns during construction of open cut trenches for utility work or foundation work as required by any governing laws or ordinances and as may be necessary to protect life, property or the work. During demolition activities, Temporary Sheeting/Shoring may be allowed to protect adjacent buildings, roads or utilities.
Dredging in Waterways	Removal, transportation and proper disposal of sediment from navigable waterways if the dredging will lead to economic development of the Brownfield property. If sampling results show that the sediments are contaminated, consultation with the Department of Environmental Quality should be undertaken to ensure that contaminated sediments are disposed of properly.
Soft Costs	Soft costs must be <i>directly</i> associated with site preparation activities (including engineering and design), legal and professional fees and costs.
Specific and Unique Activities	MSF may consider site preparation activities that demonstrate a specific and unique need due to the site-specific Brownfield conditions necessary for the successful redevelopment of the eligible property.

In addition to the previous eligible activities, MSF provides guidance on activities that are generally **not eligible** including:

Site Preparation Tasks	Guidance
Not Allowable	
Topsoil and Seeding	Not allowable unless as a Temporary Erosion Control, or an Infrastructure Improvement if located within a public right-of-way.
Landscaping	May be allowed as an Infrastructure Improvement if located within a public right-of-way.

Underground Sprinkling System (irrigation)	May be allowed as an Infrastructure Improvement if located within a public right-of-way, or located on private land if it is part of a Low Impact Design storm water management system exclusively utilizing collected water.
Site Lighting	Not allowable unless a part of Temporary Site Control as outlined above, or as an Infrastructure Improvement if located within a public right-of-way or located within an underground or vertical parking ramp.
Engineered Fill	Not allowable unless a part of Fill as outlined above.
Backfill Around Foundations and Private/Site Utilities	Backfill around foundations and private/site utilities is generally not allowed because clean backfill (typically clean earth fill composed of sand, or other municipally approved fill) is required around all foundations and underground utility installations, regardless of location or of the Brownfield conditions present at the site.