



**Washtenaw County  
Office of Strategic Planning  
Brownfield Redevelopment Program**

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**Washtenaw County Brownfield Redevelopment Authority  
Program Policies and Procedures**

Approved by the WCBRA Board on February 12, 2009

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**Section 1: Background**

On May 19, 1999, the Washtenaw County Board of Commissioners (BOC) voted unanimously to establish a County-wide Brownfield Redevelopment Authority (WCBRA) and Brownfield Redevelopment Zone (Zone) in accordance with the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of the State of Michigan of 1996, as amended (PA 381). The Brownfield Redevelopment Zone was defined as the jurisdictional boundary of each municipality within Washtenaw County that passed a resolution to join. Subsequently, the BOC appointed members to serve on the Board of Directors of the new WCBRA.

The purpose of the Brownfield Redevelopment Program (Program) is to facilitate the redevelopment of previously developed sites classified as a "facility", functionally obsolete or blighted as defined by Public Acts 381 of 1996 and 451 of 1994 (Natural Resources and Environmental Protection Act-NREPA), as amended. Note, that PA 381 has a provision allowing for a Michigan Business Tax Credit (MBT) for eligible properties. The Program also allows the use of Tax Increment Financing (TIF) revenues to pay for or reimburse public or private costs of "eligible activities." These activities include:

All Communities:

- Baseline Environmental Assessments (BEAs)
- Due care activities (which limit exacerbation of, or exposure to, contamination on a site)
- Additional response activities
- Reasonable costs of preparing a brownfield plan, work plan and actual cost of work plan review
- Demolition
- Lead and Asbestos Assessment and Abatement
- Administrative fees
- Capture for the local site remediation revolving fund

City of Ann Arbor and the City of Ypsilanti (Qualified Local Units of Government (LUG), aka "core communities"):

- Activities eligible in "All Communities"
- Infrastructure improvements that benefit the public
- Site preparation

**Section 2: Policies**

**A. To qualify for brownfield incentives:**

1. The proposed project site meets the definition of an eligible property as defined in Public Act 381 of 1996, as amended, MCL 125.2652 Definitions.
2. The project is located in the Brownfield Redevelopment Zone, which is defined as the jurisdictional boundary of each municipality within Washtenaw County that passed a resolution requesting to join the WCBRA.
3. The LUG supports inclusion of the eligible property in the Brownfield Plan and use of TIF to support the proposed brownfield project.
4. The proposed redevelopment for the eligible property is consistent with the master plans, zoning ordinances and community/economic development goals of the local municipality where the proposed project is located, as determined by the LUG.
5. The existing character of the eligible property is such that redevelopment activities would be limited or

prohibited without brownfield redevelopment assistance provided by PA 381 and/or other brownfield redevelopment programs. In addition, the project developer commits to explore all other available private and public funding sources, as determined in consultation with the WCBRA.

6. An analysis demonstrates that the required eligible activities can be satisfactorily completed within the available resources under this program, or if not, that supplemental funding sources, such as private equity or financing, tax credits, grants or loans, will be utilized to complement the financial resources available under PA 381 for proposed projects.
7. The developer has provided evidence of a firm commitment to the project and a demonstration of sufficient experience, financial resources, and development capabilities to successfully implement the proposed redevelopment project.
8. The proposed project site has adequate access to the necessary public infrastructure and utilities needed to serve the proposed redevelopment project, as determined in consultation with the affected community.
9. The developer identifies how and to what extent the project meets the sustainability goals of the WCBRA.
10. The WCBRA reserves the right to consider other factors applicable to a specific project or participating municipality.

**B. To qualify for reimbursement of interest on costs of eligible activities:**

The reimbursement of interest will be determined on a case-by-case basis, but only where a clear financial gap is demonstrated. The following criteria must be met:

1. All costs for which interest is being requested must be eligible environmental or non-environmental activities
2. Reimbursement of interest, and the interest rate, must be approved by the LUG
3. Reimbursement of interest must be included in an approved brownfield plan

**C. To qualify for local-only reimbursement:**

The WCBRA encourages costs of all eligible activities be reimbursed with both incremental local and school operating taxes to the extent practicable; however, there are circumstances when reimbursement only with local tax increments will be approved. Each such project and eligible activity, for which reimbursement with only local tax increments (local-only) is proposed, will be considered on a case-by-case basis and must meet the following criteria:

1. Reimbursement of the costs of eligible activities and interest using only local taxes will be considered only if all of the following conditions are met:
  - a. All activities must be eligible under the Act
  - b. The activity is preparation of a Brownfield Plan/Amendment
  - c. The cumulative local-only capture period for all activities can be no longer than five years, unless otherwise approved by the LUG
  - d. Need and rationale for the local-only capture, based on project economics and/or schedule demands, must be demonstrated
  - e. Eligible activities, interest and local-only capture must be approved by the LUG
  - f. Descriptions and costs of activities and interest must be included in an approved brownfield plan
  - g. Reimbursement using local-only tax increments is authorized or not prohibited by the Act
2. Eligible activities completed on an eligible property prior to the approval of the brownfield plan will be considered for local-only reimbursement if all of the following criteria are met:
  - a. Activities were eligible environmental activities
    - i. Site investigation activities for due diligence and due care
    - ii. BEAs and reports
    - iii. Due care activities
  - b. Activities were conducted no earlier than 12/1/2007
  - c. All criteria described in 1. above are met

3. Eligible activities on eligible property that are conducted after brownfield plan approval and are included in a Work Plan submitted to the MDEQ or MEGA for approval, but are not approved by the MDEQ or MEGA, or such Work Plan approval is not sought, will be considered if all of the following criteria are met:
  - a. Must be an eligible environmental or non-environmental activity
    - i. Baseline Environmental Assessments (BEAs)
    - ii. Due care activities
    - iii. Additional response activities
    - iv. Demolition
    - v. Lead and Asbestos Assessment and Abatement
    - vi. Site preparation and public infrastructure (core communities only)
  - b. All criteria described in 1. above are met
4. Interest on costs of eligible activities will be reimbursed with local-only taxes if one of the following criteria is met:
  - a. Costs for eligible activities, for which local-only interest is requested, are not eligible or were not approved for reimbursement with school operating taxes and were approved for local-only reimbursement as described above
  - b. Capture of school operating taxes for reimbursement of interest costs for eligible activities was denied by the MDEQ or MEGA
  - c. Reimbursement is approved by both the LUG and WCBRA in response to exceptional project circumstances

### **Section 3: Procedures**

The BRA recognizes the importance of development project schedules and will expedite brownfield plan review and approval process to the extent possible.

The following steps detail the process for accessing available brownfield redevelopment incentives in Washtenaw County.

#### **A. Project Concept Application**

1. The developer or other project sponsor shall provide the following project information to the WCBRA and LUG to support evaluation of the appropriateness of project for participation in this program.
  - a. Basic applicant and site information (includes parcel ID number and legal description)
  - b. General scope of project
  - c. Project description
  - d. Basis and evidence for property eligibility
  - e. Anticipated brownfield redevelopment eligible activities and costs, if known
  - f. Intended site use
  - g. Detailed proforma showing financing gap
  - h. Detailed spreadsheet identifying eligible activities and anticipated cost, including a reliable basis for cost estimate (see Eligible Activity Table)
  - i. Detailed table showing breakdown of TIF reimbursement by taxing jurisdiction
  - j. Anticipated development schedule
  - k. Preliminary site plan or concept sketch
  - l. Location on map (as described on the application form)
  - m. Current title commitment, purchase agreement or ownership
  - n. Status of development permits/permit applications
  - o. Additional information as requested by WCBRA
2. The required information shall be submitted by the developer to the WCBRA on a Project Concept Application form to be provided by the Brownfield Program Staff (Staff).
3. Staff will review the application and work with the developer if revisions are necessary.
4. Staff will take the completed application to the LUG in which the project is located and request approval,

through a process developed at the discretion of the LUG, to move forward with the brownfield process and the development of the Brownfield Plan.

5. Once the LUG has given approval to move forward with the brownfield process and the development of a brownfield plan, the developer will be assessed the application processing fee (see **Section 4: Associated Costs**).

Upon approval of the Project Concept Application, the BRA and/or staff will provide a timeline for each project, in consultation with the affected member municipality and the developer(s).

## **B. Brownfield Plan**

1. Once the application is approved, and if the developer is seeking Brownfield incentives (TIF and/or MBT credit) to help fill the financial gap created by the additional costs associated with redeveloping a brownfield site, the developer will have to create a brownfield plan. The brownfield plan must include all sections identified in PA 381, Section 13 (1) (MCL 125.2663 Brownfield plan; provisions). In summary the brownfield plan includes the following:
  - a. Plan for redevelopment
  - b. Nature and condition of property
  - c. Plan to address environmental and non-environmental activities
  - d. Costs to be reimbursed including the eligible activities (see Section 1), the administrative fee and the local site remediation revolving fund capture (see Section 4: Associated Costs).
  - e. Method by which the costs of the plan will be financed.
  - f. An estimate of the impact of tax increment financing on the revenues of all tax jurisdictions in which the eligible property is located.
2. Staff will review the brownfield plan and work with the developer if revisions are necessary.

## **C. Brownfield Plan Approval Process**

The draft brownfield plan will be brought through the approval process. The brownfield plan must be approved by the LUG, WCBRA and BOC. The site must be an eligible property and all activities must be eligible activities as defined in PA 381, as amended. The plan must also be consistent with the WCBRA policies outlined in **Section 2: Policies** above.

1. The brownfield plan approval process consists of the following activities:
  - a. The WCBRA will create a project-specific Brownfield Plan Subcommittee to review and consider the brownfield plan (produced as described in **Section 3.b.2** above) for approval. The subcommittee will then pass its recommendations for approval or revision of the brownfield plan to the LUG and WCBRA for their consideration.
    - i. It is the intention of the WCBRA that all Subcommittee meetings be conducted as open meetings. However, at times, subcommittees may have reason to conduct closed meetings due to matters of confidentiality.
    - ii. The Subcommittee will use the Draft Brownfield Plan Evaluation Guidelines as the basis for the review. Once the review is completed, the subcommittee will present its recommendations at the next BRA Board meeting.
    - iii. The Subcommittee will consist of three WCBRA Board members and a representative from the LUG in which the eligible property is located.
  - b. After final approval of the brownfield plan by the subcommittee, the LUG, in which the project is located, reviews, considers and approves the brownfield plan through a process developed at the discretion of the LUG. Note: Some LUGs require that a public hearing be held by their governing body in addition to Washtenaw County (see 1.d. below). If that is required, the LUG coordinates this process, and the Staff provides available resources and/or templates.
  - c. After approval by the LUG, the WCBRA reviews and considers the brownfield plan for approval.
  - d. A public hearing will be held by the governing jurisdiction (Washtenaw County Board of Commissioners; BOC).
    - i. Two public notices, satisfying the public hearing announcement requirements of Act 381, must be placed in the local paper(s) no less than 10 days and no more than 40 days before the public

hearing.

- e. The Washtenaw County BOC reviews and considers the brownfield plan for approval.
2. Once the brownfield plan is approved, a reimbursement agreement must be signed. If capture of school operating taxes for reimbursement of eligible non-environmental costs is contemplated, the reimbursement agreement must be completed and signed before submission of an Act 381 Work Plan for those activities.
3. If the TIF includes the capture of school operating taxes for eligible activities, an Act 381 Work Plan must be completed in accordance with the requirements of Act 381 and guidance published by the MDEQ/MEDC and submitted to Staff. Staff will review the Work Plan and work with the developer and/or developer's representative (consultant) to finalize it. Staff then will coordinate with the appropriate agency(s) for the submission and review of the brownfield plan, Act 381 Work Plan, and other necessary documents as follows:
  - a. If the TIF includes the capture of school operating Taxes for environmental activities, Staff will submit a completed Work Plan to the MDEQ. The Work Plan must include the approved brownfield plan, which will be evaluated during the Work Plan review.
  - b. If the TIF includes the capture of school operating taxes for non-environmental activities (in both core and non-core communities), Staff will submit a completed Work Plan to the Michigan Economic Development Corporation (MEDC) to review on behalf of Michigan Economic Growth Authority (MEGA). The Work Plan submission must include the approved brownfield plan, a signed development agreement or reimbursement agreement, and other documents and information required by the MEDC.Please note, the following "exempt" eligible activities included in an approved brownfield plan may be reimbursed with school operating taxes without being included in an MDEQ-approved Work Plan:
  - i. Site investigation activities required to conduct a BEA and to evaluate due care issues and obligations required under NREPA Part 201;
  - ii. Preparing a BEA report; and
  - iii. Preparing a compliance analysis or due care plan(s) to comply with NREPA Part 20107a.These activities must not begin before the brownfield plan is approved. However, if school operating taxes are to be captured to reimburse interest costs for these "exempt" activities, descriptions and costs for the activities must be included in an Act 381 Work Plan approved by the appropriate agency.
4. Generally, conducting eligible activities and redevelopment can begin once the relevant elements of the approval process are complete. However, as described above, certain activities conducted prior to Brownfield Plan approval may be reimbursed. Also, different reimbursement schemes may be applicable at specific points in this process: 1) after a brownfield plan is approved and before an Act 381 Work Plan is approved; 2) after both the brownfield plan and an Act 381 Work Plan are approved and/or 3) after a brownfield plan is approved and an Act 381 Work Plan is not required. Please refer to **Section 2: Policies** for more information about different reimbursement eligibilities and approaches for certain eligible activities.

#### **D. Reimbursement Process**

1. The WCBRA will begin the reimbursement process after the following have been completed:
  - a. The brownfield plan has been approved
  - b. The Reimbursement Agreement has been executed.
  - c. The Act 381 Work Plan has been approved by the MDEQ and/or MEGA, as appropriate
  - d. The approved eligible activities have been completed and/or initiated.
  - e. All the appropriate invoices and documentation for actual costs incurred to conduct the approved eligible activities have been submitted and reviewed by the WCBRA, subject to the conditions outlined in the reimbursement agreement.
  - f. TIF capture has begun subject to the following:
    - i. Property owner must pay taxes
    - ii. The tax year is within TIF capture period specified in the brownfield plan and Act 381.
2. The WCBRA will only reimburse the **actual costs** to conduct approved eligible activities. The WCBRA uses only the incremental taxes generated by the redevelopment project to reimburse approved eligible

activities, and the yearly reimbursement amount is based on the **actual** yearly incremental taxes collected.

3. Invoices, eligible activity documentation and proof of payment must be submitted to the WCBRA within one year the invoice, documentation or proof of payment was issued. The actual eligible activity costs should be summarized in a form similar to the Eligible Activity Tracking Table, provided with the reimbursement agreement.
4. The actual amount of TIF reimbursement in any year may be reduced by the amount of TIF allocated for reimbursement of WCBRA administrative expenses (see Section 4.b. below) and funding the local site remediation revolving fund, as provided in the approved brownfield plan, reimbursement agreement, and Act 381.

## **Section 4: Associated Costs**

### **A. Project Application Fee**

1. The WCBRA will assess an application fee for a brownfield project once the LUG approves the project application.
2. The developer is responsible for paying the project application fee to WC Brownfield Program after the project application has been approved by the LUG and the brownfield plan process begins.
3. The fee is based on total project investment:
  - \$0- \$5Million = \$3,000
  - \$5M - \$10M = \$4,000, and
  - \$10 M and over = \$5,000.
4. Exceptions to this policy due to extraordinary circumstances will be considered on a case by case basis.

### **B. Administrative costs reimbursement**

1. Annual reimbursement of reasonable and actual WCBRA administrative and operating costs from local taxes is a permitted activity under PA 381 of 1996, as amended. The maximum allowable annual WCBRA administrative costs that can be reimbursed under PA 381 is presented below:
  - Up to five active projects - \$100,000
  - Greater than five and up to ten active projects - \$125,000
  - Greater than 10 and up to 15 active projects - \$150,000

An "active project" is one in which the WCBRA is currently capturing taxes under the PA 381.

2. These costs are allocated per project and used to cover the actual administrative expenses. Administrative expenses include the following:
  - Assistance provided to communities and developers to prepare and approve brownfield plans and work plans;
  - Review and approval of brownfield plans and work plans;
  - Preparation, review and approval of reimbursement and/or development agreements;
  - Review and approval of actual eligible activities;
  - Managing and accounting tax increment capture and disbursement;
  - Managing and accounting eligible activity reimbursement;
  - Managing and disbursing funds from the LSRRF; and
  - Community education and outreach
3. For reimbursement of actual administrative expenses, the WCBRA will transfer to its Administrative Fund ten percent (10%) of the total incremental taxes captured annually under each approved brownfield plan for the duration of the plan or as otherwise allowed by statute. Actual administrative expenses will be reimbursed with only local incremental taxes.
4. If total incremental taxes transferred in any year to the Administrative Fund from all active brownfield plans exceed the actual WCBRA administrative costs in that year or the maximum allowed by PA 381 (see above), the excess will be used for reimbursement of eligible activities or returned to the taxing jurisdictions. The excess administrative capture will be allocated to each brownfield plan/project on a

prorated basis defined by the ratio of the administrative capture from that plan/project to the total administrative capture for that year. If eligible costs in an individual plan remain to be reimbursed, the prorated excess will be applied to cost reimbursement. If all eligible costs have been reimbursed, the excess will be distributed to the local taxing jurisdictions on a prorated basis according to the ratio of that jurisdiction's millage to the total millage captured.

### **C. Local Site Remediation Revolving Fund Capture**

It is the intent of the WCBRA to capitalize the Local Site Remediation Revolving Fund (LSRRF) immediately. The WCBRA intends to include provisions to capture revenues for deposit into the LSRRF in the approved brownfield plan for each property/project located in the Brownfield Redevelopment Zone (as defined in **Section 1: Background**). The WCBRA intends to capture all or a portion of the LSRRF funds **during** the reimbursement period for eligible activities; however, each plan will be considered on a case-by-case basis to determine the most appropriate method for capturing LSRRF funds.

LSRRF funds will be used to further the purpose of the Program, which is to facilitate the redevelopment of previously developed sites classified as a "facility", functionally obsolete or blighted as defined by Public Acts 381 of 1996 and 451 of 1994 (Natural Resources and Environmental Protection Act-NREPA), as amended. LSRRF funds can only be used to fund eligible activities, as defined by PA 381. LSRRF funds are eligible for use by all eligible properties located within the Brownfield Redevelopment Zone to assist with the completion of eligible activities. The LSRRF funds typically will be distributed as revolving loans, which allows these funds to continually revolve throughout the Brownfield Redevelopment Zone. LSRRF funds may be distributed as grants in response to exceptional circumstances solely at the discretion of the WCBRA. The use of the funds will be determined on a case-by-case basis. The following criteria must be met:

1. The WCBRA will capture incremental local and school operating taxes, to the extent allowed by law, to fund the LSRRF until funds in the following amount have been placed in the LSRRF: a minimum of fifteen percent (15%) of the total eligible activities to a maximum amount equivalent of five years capture after eligible activities costs have been reimbursed.
2. The rate and schedule of incremental tax capture for the LSRRF will be determined on a case-by-case basis. Considerations will include, but not be limited to the following; input from the municipal member (e.g. total capture amount), total capture duration, total annual capture, project economic factors, level of existing LSRRF funding, and projected need for LSRRF funds.
3. School operating taxes for MDEQ eligible activities can be captured for LSRRF deposit, but school operating taxes for MEGA eligible activities cannot be captured for LSRRF deposit. The amount of school operating taxes deposited into the LSRRF for MDEQ activities cannot exceed the total amount of school operating taxes used to reimburse eligible activities.
4. If an approved brownfield plan does not provide for the capture of incremental school operating taxes, or provides for reimbursement of only MEGA eligible activities, LSRRF capture will derive solely from incremental local taxes. In these circumstances, the impact of LSRRF funding on the duration of local tax capture will be considered in determining the amount and schedule for LSRRF capture.
5. Exceptions to this policy due to extraordinary circumstances will be considered on a case by case basis.

### **Section 5: Contact Information**

Persons interested in the Washtenaw County Brownfield Redevelopment Authority are encouraged to contact Brett Lenart, Office of Strategic Planning, Post Office Box 8645, Ann Arbor, Michigan 48104-8645. Email is [lenartb@ewashtenaw.org](mailto:lenartb@ewashtenaw.org), telephone number (734) 222-3860, and fax (734) 222-6573.

Ver. Date: 5/5/09